



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 21 सितम्बर, 2019/30 भाद्रपद, 1941

हिमाचल प्रदेश सरकार

गृह विभाग

अधिसूचना

शिमला-2, 16 सितम्बर, 2019

संख्या : होम बी(बी) 3-4/95-II.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से,

हिमाचल प्रदेश अग्निशमन सेवाएं विभाग में उप अग्निशमन अधिकारी, वर्ग—III (अराजपत्रित) अलिपिकवर्गीय, के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध—“क” के अनुसार भर्ती और प्रोन्नति नियम बनाते हैं, अर्थात् :-

1. **संक्षिप्त नाम और प्रारम्भ.**—(i) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश अग्निशमन सेवाएं विभाग, उप अग्निशमन अधिकारी, वर्ग—III (अराजपत्रित), अलिपिकवर्गीय भर्ती और प्रोन्नति नियम, 2019 हैं।

(ii) ये नियम, राजपत्र, (ई—गजट) हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. **निरसन और व्यावृत्तियां.**—(i) अधिसूचना संख्या होम बी(बी) 3-4/95 तारीख 20-9-2002 द्वारा अधिसूचित और समय-समय पर यथासंशोधित हिमाचल प्रदेश अग्निशमन सेवाएं विभाग, उप अग्निशमन अधिकारी वर्ग—III, (अराजपत्रित) भर्ती एवं प्रोन्नति नियम, 2002 का एतद्वारा निरसन किया जाता है।

(ii) ऐसे निरसन के होते हुए भी, उपर्युक्त उप नियम 2(1) के अधीन इस प्रकार निरसित सुसंगत नियमों के अधीन की गई कोई नियुक्ति, बात या कार्यवाई इन नियमों के अधीन विधिमान्य रूप में की गई समझी जाएगी।

आदेश द्वारा,
हस्ताक्षरित/—
अतिरिक्त मुख्य सचिव (गृह)।

उपाबन्ध—‘क’

हिमाचल प्रदेश अग्निशमन सेवाएं विभाग में उप अग्निशमन अधिकारी, वर्ग—III (अराजपत्रित) के पद के लिए भर्ती और प्रोन्नति नियम

1. **पद का नाम.**—उप अग्निशमन अधिकारी

2. **पद की संख्या.**—32 (बत्तीस)

3. **वर्गीकरण.**—वर्ग—III (अराजपत्रित) अलिपिकवर्गीय

4. **वेतनमान.**—(i) नियमित पदधारियों के लिए पे बैंड : 10300-34800/- रुपए जमा 3600/- रुपए ग्रेड पे।

(ii) संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियां : स्तंभ संख्या 15-क में दिए गए ब्योरे के अनुसार 13,900/- रुपए प्रतिमास।

5. **चयन पद अथवा अचयन पद.**—अचयन पद

6. **सीधी भर्ती के लिए आयु.**—18 से 45 वर्ष :

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त व्यक्तियों सहित, पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर की गई नियुक्ति के कारण विहित आयु में शिथिलीकरण का पात्र नहीं होगा :

परन्तु यह और कि अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य पिछड़े वर्गों और व्यक्तियों के अन्य प्रवर्गों के लिए ऊपरी आयु सीमा में उस विस्तार तक शिथिलीकरण किया जाएगा जितना की हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश (आदेशों) के अधीन अनुज्ञेय हैं :

परन्तु यह और भी कि पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, जो ऐसे पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सेक्टर, निगमों/स्वायत्त निकायों में आमेसन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती के लिए आयु सीमा में ऐसी ही रियायत अनुज्ञात की जाएगी, जैसी सरकारी कर्मचारियों को अनुज्ञेय है, ऐसी रियायत, तथापि पब्लिक सेक्टर निगमों/स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को अनुज्ञेय नहीं होंगी, जो पश्चात्पूर्वी ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/किए गए हैं और उन पब्लिक सेक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेसित किए गए हैं/किए गए थे :

टिप्पण.—(1) सीधी भर्ती के लिए आयु सीमा की गणना उस वर्ष के प्रथम दिवस से की जाएगी, जिसमें कि पद (पदों) को आवेदन आमन्त्रित करने के लिए, यथास्थिति, विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है।

7. सीधे भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं.—(क) अनिवार्य अर्हताएं : (i) किसी मान्यता प्राप्त विश्वविद्यालय से विज्ञान स्नातक या किसी ट्रेड में इंजनीयरिंग स्नातक (बी०ई०) की उपाधि।

(चयन के पश्चात् अभ्यर्थी राज्य अग्निशमन प्रशिक्षण केन्द्र से बुनियादी अग्निशमन कोर्स को करने के पश्चात् राष्ट्रीय अग्निशमन सेवा महाविद्यालय नागपुर से उप-अग्निशमन अधिकारी कोर्स करेगा)

(ii) न्यूनतम शारीरिक मापदण्ड:—

लम्बाई—165 सेंटीमीटर
छाती—80सेंटीमीटर (फुलाकर 85 सेंटीमीटर तक)
वजन—52 किलोग्राम
दृष्टि—6/6 बिना चश्मे के

(iii) शारीरिक दक्षता:—

क. 15 सैकेण्ड में 100 मीटर की दौड़
ख. ऊंची कूद 120 सेंटीमीटर
ग. लम्बी कूद 3 मीटर, 60 सेंटीमीटर
घ. 3 मिनट में 800 मीटर दौड़

(ख) वांछनीय अर्हता(ए):

हिमाचल प्रदेश की रूढ़ियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।

8. सीधे भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के लिए विहित आयु और शैक्षिक अर्हताएं प्रोन्नत व्यक्ति (व्यक्तियों) की दशा में लागू होंगी या नहीं.—आयु : लागू नहीं।

शैक्षिक अर्हता : हां, जैसी निम्न स्तम्भ संख्या 11 के सामने विहित किया गया है

9. परिवीक्षा की अवधि, यदि कोई हो.—(i) सीधी भर्ती की दशा में:

(क) दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए, विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और कारणों को लिखित में अभिलिखित करके आदेश दे।

(ख) संविदा के आधार पर, सेवाधृति के आधार पर नियुक्ति पर, अधिवर्षिता के पश्चात् पुनर्नियोजन पर और आमेलन पर कोई परीक्षा नहीं होगी।

(ii) प्रोन्नति की दशा में: कोई परीक्षा नहीं होगी

10 भर्ती की पद्धति: भर्ती सीधी होगी या प्रोन्नति/सैकेंडमेंट, स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पद (पदों) की प्रतिशतता.—(i) पचहतर प्रतिशत प्रोन्नति द्वारा; और

(ii) पच्चीस प्रतिशत सीधी भर्ती द्वारा यथास्थिति, नियमित आधार पर या संविदा के आधार पर भर्ती द्वारा।

11. प्रोन्नति/सैकेंडमेंट, स्थानान्तरण द्वारा भर्ती की दशा में वे श्रेणियां (ग्रेड) जिनसे प्रोन्नति/सैकेंडमेंट, स्थानान्तरण किया जाएगा.—अग्रणी फायरमैन में से प्रोन्नति द्वारा जिन्होंने राष्ट्रीय अग्निशमन सेवा महाविद्यालय नागपुर से उप-अग्निशमन अधिकारी कोर्स अर्हित किया हो और जिनका तीन वर्ष का नियमित सेवाकाल या ग्रेड में की गई लगातार तदर्थ सेवा, यदि कोई हो, को सम्मिलित करके तीन वर्ष का नियमित सेवाकाल हो:

परन्तु उप-अग्निशमन अधिकारी के पदों को भरने के लिये निम्नलिखित चार (04) बिन्दु पद आधारित रोस्टर का अनुसरण किया जाएगा:

रोस्टर बिन्दु संख्या	प्रवर्ग
पहला, दूसरा, तीसरा	प्रोन्नत व्यक्ति
चौथा	सीधी भर्ती

टिप्पण.—रोस्टर, प्रत्येक चौथे बिन्दु के पश्चात् तब तक दौहराया जाता रहेगा जब तक कि समस्त प्रवर्गों को दी गई प्रतिशतता तक प्रतिनिधित्व प्राप्त नहीं हो जाता तत्पश्चात् रिक्ति को उसी प्रवर्ग में से भरा जाएगा, जिसमें पद रिक्त हुआ हो।

(I) परन्तु प्रोन्नति के प्रयोजन के लिए प्रत्येक कर्मचारी को, जनजातीय/कठिन/दुर्गम क्षेत्रों और दूरस्थ/ग्रामीण क्षेत्रों में पद (पदों) की ऐसे क्षेत्रों में पर्याप्त संख्या की उपलब्धता के अध्वीन, कम से कम एक कार्यकाल तक सेवा करनी होगी:

परन्तु दूरस्थ/ग्रामीण क्षेत्र में तैनाती/स्थानान्तरण के सिवाय उपर्युक्त परन्तुक (1) उन कर्मचारियों के मामले में लागू नहीं होगा जिनकी अधिवर्षिता के लिए पांच वर्ष या उससे कम की सेवा शेष रही हो। तथापि पांच वर्ष की यह शर्त प्रोन्नति के मामलों में लागू नहीं होगी:

परन्तु यह और भी कि उन अधिकारियों/कर्मचारियों को, जिन्होंने जनजातीय/कठिन/दुर्गम क्षेत्रों में कम से कम एक कार्यकाल तक सेवा नहीं की है, ऐसे क्षेत्र में उसके अपने संवर्ग (काडर) में सर्वथा वरिष्ठता के अनुसार स्थानान्तरित किया जाएगा।

स्पष्टीकरण—I उपरोक्त परन्तुक (I) के लिए जनजातीय/कठिन/दुर्गम क्षेत्रों और दूरस्थ/ग्रामीण क्षेत्रों में “कार्यकाल” से प्रशासनिक आत्यावश्यकताओं/सुविधा को ध्यान में रखते हुए साधारणतय तीन वर्ष की अवधि या ऐसे क्षेत्रों में तैनाती की इससे कम अवधि अभिप्रेत होगी।

स्पष्टीकरण—II उपरोक्त परन्तुक (I) के प्रयोजन के लिए जनजातीय/कठिन क्षेत्र निम्न प्रकार से होंगे:—

1. जिला लाहौल एवं स्पिति
2. चम्बा जिला का पांगी और भरमौर उपमण्डल
3. रोहडू उपमण्डल का डोडरा क्वार क्षेत्र

4. जिला शिमला की रामपुर तहसील का पन्द्रह बीस परगणा, मुनीश, दरकाली और काशापाट
5. कुल्लू जिला का पन्द्रह बीस परगणा
6. कांगडा जिला के बैजनाथ उप-मण्डल का बड़ा भंगाल क्षेत्र
7. जिला किन्नौर
8. सिरमौर जिला में उप-तहसील कमरु के काठवाड़ और कोरगा पटवार वृत्त, रेणुकाजी तहसील के भलाड़-भलौना और सांगना पटवार वृत्त और शिलाई तहसील का कोटा पाब पटवार वृत्त।
9. मण्डी जिला में करसोग तहसील का खन्योल-बगड़ा पटवार वृत्त, बाली चौकी उप-तहसील के गाडा गोसाई, मठयानी, घनयाड़, थाची, बागी, सोमगाड़ और खोलानाल पटवार वृत्त, पद्धर तहसील के झारवाड़, कुटगढ़, ग्रामन, देवगढ़, ट्रैला, रोपा, कथोग, सिल्ह-भडवानी, हस्तपुर, घमरेड और भटेढ़ पटवार वृत्त, थुनाग तहसील के चियुणी, कालीपार, मानगढ़, थाच-बगड़ा, उत्तरी मगरू और दक्षिणी मगरू पटवार वृत्त और सुन्दर नगर तहसील का बटवाड़ा पटवार वृत्त।

स्पष्टीकरण—III.—उपर्युक्त परन्तुक (I) के प्रयोजन के लिए दूरस्थ/ग्रामीण क्षेत्र निम्न प्रकार से होंगे:—

- (i) उप-मण्डल/तहसील मुख्यालय से 20 किलोमीटर की परिधि से परे के समस्त स्थान
- (ii) राज्य मुख्यालय और जिला मुख्यालय से 15 किलोमीटर की परिधि से परे के समस्त स्थान जहां के लिए बस सेवा उपलब्ध नहीं है। और तीन किलोमीटर से अधिक की पैदल यात्रा करनी पड़ती है।
- (iii) कर्मचारी का, उसके प्रवर्ग को ध्यान में लाए बिना, अपने गृहनगर या गृहनगर क्षेत्र के साथ लगता 20 किलोमीटर की परिधि के भीतर का क्षेत्र।

(II) प्रोन्नति के सभी मामलों में पद पर नियमित नियुक्ति से पूर्व, सम्भरक (पोषक) पद पर की गई लगातार तदर्थ सेवा, यदि कोई हो, इन नियमों में यथा विहित सेवाकाल के लिए, इस शर्त के अधधीन प्रोन्नति के लिए गणना में ली जाएगी, कि सम्भरक (पोषक) प्रवर्ग में तदर्थ नियुक्ति/प्रोन्नति भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार चयन की उचित स्वीकार्य प्रक्रिया को अपनाने के पश्चात् की गई थी :

(i) परन्तु उन सभी मामलों में, जिनमें कोई कनिष्ठ व्यक्ति सम्भरक (पोषक) पद में अपने कुल सेवाकाल (तदर्थ आधार पर की गई सेवा सहित, जो नियमित सेवा/नियुक्ति के अनुसरण में हों) के आधार पर उपयुक्त निर्दिष्ट उपबन्धों के कारण विचार किए जाने का पात्र हो जाता है, वहां उससे वरिष्ठ सभी व्यक्ति अपने-अपने प्रवर्ग/पद/कांडर में विचार किए जाने के पात्र समझे जाएंगे और विचार करते समय कनिष्ठ व्यक्ति से ऊपर रखे जाएंगे :

परन्तु यह और कि उन सभी पदधारियों की, जिन पर प्रोन्नति के लिए विचार किया जाना है, की कम से कम तीन वर्ष की न्यूनतम अहर्ता सेवा या पद के भर्ती और प्रोन्नति नियमों में विहित सेवा, जो भी कम हो, होगी :

परन्तु यह और भी कि जहां कोई व्यक्ति पूर्वगामी परन्तुक की अपेक्षाओं के कारण प्रोन्नति किए जाने सम्बन्धी विचार के लिए अपात्र हो जाता है, वहां उससे कनिष्ठ व्यक्ति भी ऐसी प्रोन्नति के विचार के लिए अपात्र समझा जायेगा/समझे जाएंगे।

स्पष्टीकरण.—अन्तिम परन्तुक के अन्तर्गत कनिष्ठ पदधारी प्रोन्नति के लिए अपात्र नहीं समझा जायेगा यदि वरिष्ठ अपात्र व्यक्ति भूतपूर्व सैनिक है, जो आपातकाल की अवधि के दौरान सशस्त्र बलों में शामिल हुए हैं और जिसे डिमोबिलाइज्ड आर्मड फोर्सिज परसोनल (रिजर्वेशन आफ वेकैन्सीज इन दी हिमाचल स्टेट नान टैक्निकल सर्विसीज) रूल्ज, 1972 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया है और तदधीन वरियता लाभ दिए गये हों या जिसे एक्स-सर्विस मैन (रिजर्वेशन आफ वेकैन्सीज इन दी हिमाचल प्रदेश टैक्निकल सर्विसीज) रूल्ज, 1985 के नियम 3 के उपबन्धों के अन्तर्गत भर्ती किया गया हो और तदधीन वरियता लाभ दिये गए हों।

(ii) इसी प्रकार स्थायीकरण के सभी मामलों में ऐसे पद पर नियमित नियुक्ति से पूर्व सम्भरक (पोषक) पद पर की गई लगातार तदर्थ सेवा, यदि कोई हो, सेवाकाल के लिए गणना में ली जाएगी, यदि

तदर्थ नियुक्ति/प्रोन्नति उचित चयन के पश्चात् और भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार की गई थी :

परन्तु की गई तदर्थ सेवा को गणना में लेने के पश्चात् जो स्थायीकरण होगा उसके फलस्वरूप पारस्परिक वरीयता अपरिवर्तित रहेगी।

12. यदि विभागीय प्रोन्नति स्थाईकरण समिति विद्यमान हो तो उसकी सरंचना.—जैसी सरकार द्वारा समय-समय पर गठित की जाए।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा.—जैसा विधि द्वारा अपेक्षित हो।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा.—किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना अनिवार्य है।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.—सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन लिखित परीक्षा के गुणागुण तथा इन नियमों से संलग्न परिशिष्ट—I में यथा विनिर्दिष्ट रीति के अनुसार मुल्यांकन के आधार पर किया जाएगा या यदि, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती अभिकरण/प्राधिकरण ऐसा करना आवश्यक या समीचीन समझे तो लिखित परीक्षा के गुणागुण और इन नियमों से संलग्न परिशिष्ट—I में यथा विनिर्दिष्ट रीति के अनुसार मुल्यांकन तथा पूर्व में ली गई छंटनी परीक्षा (वस्तुनिष्ठ प्रकार की) या व्यवहारिक परीक्षा या दक्षता परीक्षा या शारिरिक परीक्षण के आधार पर किया जाएगा जिसका स्तर/पाठ्यक्रम आदि, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग/अन्य भर्ती अभिकरण/प्राधिकरण द्वारा अवधारित किया जाएगा।

15-क. संविदा नियुक्ति, द्वारा पद पर नियुक्ति के लिए चयन.—इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियां नीचे दिए गए निबन्धनों और शर्तों के अधधीन की जाएंगी:—

(I) संकल्पना:

(क) इस पालिसी के अधीन हिमाचल प्रदेश अग्निशमन सेवाएं विभाग में उप-अग्निशमन अधिकारी को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा:

परन्तु संविदा अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण-पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी।

(ख) पद का हिमाचल प्रदेश कर्मचारी चयन आयोग के कार्यक्षेत्र में आना निदेशक, अग्निशमन सेवाएं हिमाचल प्रदेश रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात् अध्यपेक्षा को सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश कर्मचारी चयन आयोग, हमीरपुर के समक्ष रखेगा।

(ग) चयन इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा

(II) संविदात्मक उपलब्धियां :

संविदा के आधार पर नियुक्त उप-अग्निशमन अधिकारी को 13900/- रुपए की दर से समेकित नियत संविदात्मक रकम (जो पे बैंड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी। यदि संविदा में एक वर्ष से अधिक की बढ़ौतरी की जाती है तो पश्चात्वर्ती वर्ष (वर्षों), के लिए संविदात्मक उपलब्धियों में 417/- रुपए की रकम (पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी।

(III) नियुक्ति/अनुशासन प्राधिकारी :

निदेशक, अग्निशमन सेवाएं, हिमाचल प्रदेश नियुक्ति और अनुशासन प्राधिकारी होगा।

(IV) चयन प्रक्रिया :

संविदा नियुक्ति के मामले में पद पर नियुक्ति के लिए चयन, लिखित परीक्षा के गुणागुण तथा इन नियमों से संलग्न परिशिष्ट-I में यथा विनिर्दिष्ट रीति के अनुसार मूल्यांकन के आधार पर किया जाएगा या यदि, ऐसा करना आवश्यक या समीचीन समझे तो लिखित परीक्षा के गुणागुण तथा इन नियमों से संलग्न परिशिष्ट-I में यथा विनिर्दिष्ट रीति के अनुसार मूल्यांकन तथा पूर्व में ली गई छंटनी परीक्षा (वस्तुनिष्ठ प्रकार की)/लिखित परीक्षा या व्यावहारिक परीक्षा या दक्षता परीक्षा या शारीरिक परीक्षण के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम आदि, हिमाचल प्रदेश कर्मचारी चयन आयोग, हमीरपुर द्वारा अवधारित किया जाएगा।

(V) संविदात्मक नियुक्तियों के लिए चयन समिति :

जैसी सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश कर्मचारी चयन आयोग, हमीरपुर द्वारा समय-समय पर गठित की जाए।

(VI) करार :

अभ्यर्थी को चयन के पश्चात् इन नियमों से संलग्न परिशिष्ट-"II" के अनुसार करार हस्ताक्षरित करना होगा।

(VII) निबन्धन और शर्तें :

(क) संविदा के आधार पर नियुक्त व्यक्ति को 13900/-रुपए की दर से समेकित नियत संविदात्मक रकम (जो पे बैण्ड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी। संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष/वर्षों के लिए संविदात्मक रकम में 417/-रुपए (पद के पे बैण्ड का न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की रकम की वार्षिक वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं, जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्यपालन/आचरण ठीक नहीं पाया जाता है तो नियुक्ति पर्यवसित (समाप्त) किए जाने के लिए दायी होगी। यदि संविदा पर नियुक्त व्यक्ति प्राधिकारी द्वारा जारी पर्यवसान (समापन) आदेश से संतुष्ट नहीं है तो वह उस तारीख, जिसको पर्यवसान (समापन) आदेश की प्रति उसे परिदत्त की गई है, से पैंतालीस दिन के भीतर अपील प्राधिकारी, जो नियुक्ति प्राधिकारी से उच्चतर पंक्ति का होगा, को अपील कर सकेगा।

(ग) संविदा पर नियुक्त व्यक्ति, एक कलैण्डर वर्ष में, एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश, 10 दिन के चिकित्सा अवकाश और पॉच दिन के विशेष अवकाश का हकदार होगा/होगी। संविदा पर नियुक्त महिला को दो जीवित बच्चों तक एक सौ अस्सी दिन का प्रसूति अवकाश दिया जा सकेगा। संविदा पर नियुक्त महिला कर्मचारी पूरी सेवा के दौरान गर्भपात हो जाने सहित गर्भपात कराने की दशा में, प्राधिकृत सरकारी चिकित्सा अधिकारी द्वारा जारी चिकित्सा प्रमाण-पत्र प्रस्तुत करने पर पैंतालीस दिन से अनधिक प्रसूति अवकाश (जीवित बच्चों की संख्या का विचार किये बिना) के लिये भी हकदार होगी। संविदा पर नियुक्त कर्मचारी चिकित्सा प्रतिपूर्ति और एल.टी.सी आदि के लिए हकदार नहीं होगा/होगी। संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय किसी अन्य प्रकार का कोई अवकाश अनुज्ञात नहीं होगा :

अनुपभुक्त आकस्मिक अवकाश, चिकित्सा अवकाश और विशेष अवकाश एक कलैण्डर वर्ष तक संचित किया जा सकेगा और आगामी कलैण्डर वर्ष के लिए अग्रणीत नहीं किया जाएगा।

(घ) नियंत्रक अधिकारी के अनुमोदन के बिना कर्तव्य से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यवसान (समापन) हो जाएगा तथापि आपवादिक मामलों में जहां पर चिकित्सा आधार पर कर्तव्य (ड्यूटी) से अनधिकृत अनुपस्थिति के हालात संविदा पर नियुक्त व्यक्ति के नियंत्रण से बाहर हो तो उसकी नियमितिकरण के मामले में विचार करते समय ऐसी अवधि अपवर्जित नहीं की जाएगी, किंतु पदधारी को इस बाबत समय पर नियन्त्रण अधिकारी को सूचित करना होगा। तथापि संविदा पर नियुक्त व्यक्ति कर्तव्य से अनुपस्थिति की ऐसी अवधि के लिये संविदात्मक रकम का हकदार नहीं होगा:

परन्तु उसे सरकार के प्रचलित अनुदेशों के अनुसार, चिकित्सा अधिकारी द्वारा जारी किये गये बिमारी/आरोग्य प्रमाण-पत्र को प्रस्तुत करना होगा।

(ङ) संविदा पर नियुक्त पदधारी जिसने तैनाती के एक स्थान पर तीन वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण के लिये पात्र होगा, जहां भी प्रशासनिक आधारों पर अपेक्षित हो।

(च) चयनित अभ्यर्थी को राजपत्रित सरकारी कर्मचारी की दशा में, चिकित्सा बोर्ड द्वारा और अराजपत्रित सरकारी कर्मचारी की दशा में सरकारी चिकित्सा अधिकारी द्वारा जारी अपना आरोग्य प्रमाण-पत्र प्रस्तुत करना होगा। उन महिला अभ्यर्थियों की दशा में, जिन्हें परिसंकटमय स्वरूप के कर्तव्यों को कार्यान्वित करने वाले पदों के विरुद्ध नियुक्त किया जाना है और यदि उन्हें प्रशिक्षण की अवधि को सेवा-शर्त के रूप में पूर्ण करना है तो ऐसी महिला अभ्यर्थी, जो परीक्षण के परिणामस्वरूप बारह सप्ताह या इससे अधिक समय से गर्भवती पाई जाती है, को अस्थाई रूप से अनुपयुक्त घोषित किया जाएगा और उसकी नियुक्ति को तब तक आस्थगित रखा जाएगा जब तक कि प्रसवावस्था समाप्त नहीं हो जाती है। ऐसी महिला अभ्यर्थी का प्रसवावस्था की तारीख से छः सप्ताह के पश्चात् चिकित्सा उपयुक्तता के लिये पुनः परीक्षण किया जाएगा और यदि वह उपरोक्त यथाविनिर्दिष्ट प्राधिकारी से आरोग्य प्रमाण-पत्र प्रस्तुत करने पर उपयुक्त पाई जाती है तो वह उसके लिये आरक्षित रखे गये पद पर नियुक्त की जा सकेगी।

(छ) संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी कि नियमित प्रतिस्थानी पदधारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

(ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों जैसे कि एफ.आर., एस.आर., छुट्टी नियम, साधारण भविष्य निधि नियम, पेन्शन नियम तथा आचरण नियम आदि के उपबन्ध संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। संविदा पर नियुक्त व्यक्तियों को कर्मचारी सामूहिक बीमा स्कीम के साथ-साथ ई0पी0एफ0/जी0पी0एफ0 भी लागू नहीं होगा।

16. आरक्षण.—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा समय समय पर अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य पिछड़े वर्गों और व्यक्तियों के अन्य प्रवर्गों के लिए सेवा में आरक्षण की बाबत जारी किए गये आदेशों के अधीन होगी।

17. विभागीय परीक्षा.—लागू नहीं

18. शिथिल करने की शक्ति.—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है वहां वह कारणों को लिखित में अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, आदेश द्वारा, इन नियमों के किन्ही उपबन्ध (उपबन्धों) को, किसी वर्ग या व्यक्ति (व्यक्तियों) के प्रवर्ग या पद (पदों) की बाबत शिथिल कर सकेगी।

परिशिष्ट—I

1.	लिखित परीक्षा (लिखित परीक्षा में प्राप्तांकों की प्रतिशतता 85 अंको में से परिकलित की जानी है। उदाहरणार्थ, लिखित परीक्षा में 50 प्रतिशत अंक प्राप्त करने वाले अभ्यर्थी को 42.5 अंक दिए जाएंगे)।	85 अंक
2.	अभ्यर्थी का मूल्यांकन निम्नलिखित रीति में किया जाना है:—	15 अंक

(i)	भर्ती और प्रोन्नति नियमों में विहित न्यूनतम शैक्षिक अर्हता हेतु वरीयता = 2.5 अंक {शैक्षिक अर्हता में प्राप्ताकों की प्रतिशतता 0.025 से गुणा की जाएगी। उदाहरणार्थ, किसी व्यक्ति ने अपेक्षित शैक्षिक अर्हता में 50 प्रतिशत अंक प्राप्त किए हैं, जो उसे 1.25 अंक (50x 0.025=1.25) अनुज्ञात किए जाएंगे}।	
(ii)	यथास्थिति, अधिसूचित पिछड़े क्षेत्र व पंचायत से सम्बन्धित	= 01 अंक
(iii)	भूमिहीन कुटुम्ब/एक हेक्टेयर से कम भूमि वाले कुटुम्ब को सम्बद्ध राजस्व प्राधिकारी द्वारा प्रमाणित किया जाएगा	= 01 अंक
(iv)	इस प्रभाव का गैर-नियोजन प्रमाण-पत्र कि कुटुम्ब का कोई भी सदस्य सरकारी/अर्ध-सरकारी सेवा में नहीं है	= 01 अंक
(v)	40 प्रतिशत विकृति/निःशक्तता/दुर्बलता से अधिक वाले दिव्यांगजन	= 01 अंक
(vi)	एन.एस.एस. (कम से कम एक वर्ष) एन.सी.सी. में प्रमाण-पत्र धारक/भारत स्काउट और गाईड/राष्ट्रीय स्तर की खेल स्पर्धाओं में पदक विजेता	= 01 अंक
(vii)	सरकार द्वारा समय समय पर यथाविहित 40,000/- रुपये से कम (समस्त स्त्रियों से) वार्षिक आय वाला बी.पी.एल कुटुम्ब	= 02 अंक
(viii)	विधवा/तलाकशुदा/अकिंचन/एकल महिला	= 01 अंक
(ix)	इकलौती पुत्री/अनाथ	= 01 अंक
(x)	किसी मान्यता प्राप्त विश्वविद्यालय/संस्था से आवेदित पद से सम्बन्धित कम से कम छह मास की अवधि का प्रशिक्षण	= 01 अंक
(xi)	सरकारी/अर्धसरकारी संगठन में, आवेदित पद से सम्बन्धित अधिकतम पांच वर्ष तक का अनुभव (प्रत्येक पूर्ण किये गए वर्ष के लिए 0.5 अंक)	= 2.5 अंक

परिशिष्ट-II

उप अग्निशमन अधिकारी और हिमाचल प्रदेश सरकार के मध्य निदेशक, अग्निशमन सेवाएं हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूप

यह करार श्री/ श्रीमती _____पुत्र/पुत्री श्री____निवासी_____ संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात प्रथम पक्षकार कहा गया है) और हिमाचल प्रदेश के राज्यपाल के मध्य निदेशक, अग्निशमन सेवाएं हिमाचल प्रदेश (जिसे इसमें इसके पश्चात द्वितीय पक्षकार कहा गया है) के माध्यम से आज तारीख_____ को किया गया।

द्वितीय पक्षकार ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने उप अग्निशमन अधिकारी के रूप में संविदा के आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है :-

1. यह कि प्रथम पक्षकार उप अग्निशमन अधिकारी के रूप में_____से प्रारम्भ होने और _____ को समाप्त होने वाले दिन तक, एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में

रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस अर्थात् ————— को स्वयंमेव ही पर्यवसित (समाप्त) हो जाएगी तथा सूचना नोटिस आवश्यक नहीं होगा :

परन्तु संविदा अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण-पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि को नवीकृत/विस्तारित की जाएगी।

2. प्रथम पक्षकार की संविदात्मक रकम 13900/— रुपए प्रतिमास होगी

3. प्रथम पक्षकार की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्यपालन/आचरण ठीक नहीं पाया जाता है तो नियुक्ति पर्यवसित (समाप्त) की जाने के लिये दायी होगी। यदि संविदा पर नियुक्त व्यक्ति नियुक्ति प्राधिकारी द्वारा जारी पर्यवसान (समापन) आदेश से संतुष्ट नहीं है तो वह उस तारीख, जिसको पर्यवसान (समापन) आदेश की प्रति उसे परिदत्त की गई है, से पैंतालीस दिन के भीतर अपील प्राधिकारी, जो नियुक्ति प्राधिकारी से उच्चतर पंक्ति का होगा, को अपील कर सकेगा।

4. संविदा पर नियुक्त व्यक्ति, एक कलैण्डर वर्ष में, एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश, 10 दिन के चिकित्सा अवकाश और पांच दिन के विशेष अवकाश का हकदार होगा/होगी। संविदा पर नियुक्त महिला को दो जीवित बच्चों तक एक सौ अस्सी दिन का प्रसूति अवकाश दिया जा सकेगा। संविदा पर नियुक्त महिला पूरी सेवा के दौरान, गर्भपात हो जाने सहित गर्भपात कराने की दशा में, प्राधिकृत सरकारी चिकित्सा अधिकारी द्वारा जारी चिकित्सा प्रमाण-पत्र प्रस्तुत करने पर पैंतालीस दिन से अनधिक प्रसूति अवकाश (जीवित बच्चों की संख्या का विचार किये बिना) के लिये भी हकदार होगी। संविदा पर नियुक्त कर्मचारी चिकित्सा प्रतिपूर्ति और एल. टी.सी. आदि के लिए हकदार नहीं होगा/होगी। संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय किसी अन्य प्रकार का कोई अवकाश अनुज्ञात नहीं होगा :

अनुपभुक्त आकस्मिक अवकाश, चिकित्सा अवकाश और विशेष अवकाश एक कलैण्डर वर्ष तक संचित किया जा सकेगा और आगामी कलैण्डर वर्ष के लिए अग्रणीत नहीं किया जाएगा।

5. नियंत्रक प्राधिकारी के अनुमोदन के बिना कर्तव्य (ड्यूटी) से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यवसान (समापन) हो जाएगा तथापि आपवादिक मामलों में जहां पर चिकित्सा आधार पर कर्तव्य से अनधिकृत अनुपस्थिति के हालात संविदा पर नियुक्त व्यक्ति के नियंत्रण से बाहर हो तो उसके नियमितिकरण के मामले में विचार करते समय ऐसी अवधि अपवर्जित नहीं की जाएगी, किंतु पदधारी को इस बाबत समय पर नियन्त्रण प्राधिकारी को सूचित करना होगा। तथापि संविदा पर नियुक्त व्यक्ति कर्तव्य से अनुपस्थिति की ऐसी अवधि के लिये संविदात्मक रकम का हकदार नहीं होगा:

परन्तु उसे सरकार के प्रचलित अनुदेशों के अनुसार, चिकित्सा अधिकारी द्वारा जारी किये गये बिमारी/आरोग्य प्रमाण-पत्र को प्रस्तुत करना होगा।

6. संविदा के आधार पर नियुक्त व्यक्ति जिसने तैनाती के स्थान पर तीन वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा/होगी। जहां भी प्रशासनिक आधारों पर अपेक्षित हो।

7. चयनित अभ्यर्थी को राजपत्रित सरकारी कर्मचारी की दशा में चिकित्सा बोर्ड और अराजपत्रित सरकारी कर्मचारी की दशा में चिकित्सा अधिकारी द्वारा जारी अपना चिकित्सा आरोग्य प्रमाण-पत्र प्रस्तुत करना होगा। उन महिला अभ्यर्थियों की दशा में, जिन्हें परिसंकटमय स्वरूप के कर्तव्यों को कार्यान्वित करने वाले पदों के विरुद्ध नियुक्त किया जाना है और यदि उन्हें प्रशिक्षण की अवधि को सेवा-शर्त के रूप में पूर्ण करना है तो ऐसी महिला अभ्यर्थी, जो परीक्षण के परिणामस्वरूप बारह सप्ताह या इससे अधिक समय से गर्भवती पाई जाती है, को अस्थाई अनुपयुक्त घोषित किया जाएगा और उसकी नियुक्ति को आस्थगित रखा जाएगा जब

तक कि प्रसवावस्था समाप्त नहीं हो जाती ऐसी महिला अभ्यर्थी का प्रसवावस्था की तारीख के छः सप्ताह के पश्चात् चिकित्सा उपयुक्तता के लिये पुनः परीक्षण किया जाएगा और यदि वह उपरोक्त यथाविनिर्दिष्ट प्राधिकारी से आरोग्य प्रमाण—पत्र प्रस्तुत करने पर उपयुक्त पाई जाती है तो वह उसके लिये आरक्षित रखे गये पद पर नियुक्त की जा सकेगी।

8. संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी कि नियमित प्रतिस्थानी पदधारी को पद के वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

9. संविदा पर नियुक्त व्यक्ति (व्यक्तियों) को कर्मचारी सामूहिक बीमा स्कीम के साथ—साथ ई0 पी0 एफ0/जी0 पी0 एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने-अपने हस्ताक्षर कर दिए हैं।

साक्षियों की उपस्थिति में:

1. _____
नाम _____
पता _____
2. _____
नाम _____
पता _____
(प्रथम पक्षकार के हस्ताक्षर)

साक्षियों की उपस्थिति में :

1.
नाम
पता
2.
नाम
पता

(द्वितीय पक्षकार के हस्ताक्षर)

[Authoritative English text of this department's Notification No. Home-B(B)3-4/95-II dated 16-09-2019 as required under Clause (3) of article 348 of the Constitution of India.]

HOME DEPARTMENT

NOTIFICATION

Shimla-2, the 16th September, 2019

No. Home-B(B)3-4/95-II.—In exercise of the powers conferred by proviso to article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal

Pradesh Public Service Commission, is pleased to make the Recruitment and Promotion Rules for the post of Sub Fire **Officer, Class-III** (Non-Gazetted) Non Ministerial in the Department of Fire services, Himachal Pradesh, as per Annexure –“A” attached to this notification, namely:—

1. **Short title and commencement.**—(i) These Rules may be called the Himachal Pradesh, Fire Services Department, Sub Fire Officer, Class-III (Non-Gazetted) Non-Ministerial Recruitment and Promotion Rules, 2019.

(ii) These Rules shall come into force from the date of publication in the Rajpatra (e-Gazette), Himachal Pradesh.

2. **Repeal & Savings.**—(i) The Himachal Pradesh Fire Services Department, Sub Fire Officer (Class-III, Non-Gazetted) Recruitment and Promotion Rules 2002, notified *vide* Notification No. Home-B(B)3-4/95 dated 20-09-2002 as amended from time to time are hereby repealed.

(ii) Notwithstanding such repeal, any appointment made or anything done or any action taken under the relevant rules so repealed under Rule 2 (i) *supra* shall be deemed to have been validly made, done or taken under these rules.

By order,
Sd/-

Addl. Chief Secretary(Home).

ANNEXURE- “A”

**RECRUITMENT AND PROMOTION RULES FOR THE POST OF SUB FIRE OFFICER
CLASS-III (NON-GAZETTED) IN THE DEPARTMENT OF FIRE SERVICES,
HIMACHAL PRADESH**

1. **Name of the post.**—Sub Fire Officer

2. **Number of post.**—32 (Thirty Two)

3. **Classification.**—Class-III (Non Gazetted) Non Ministerial

4. **Scale of pay.**—(i) *Pay Band for regular incumbents:* Rs. 10300-34800+3600 Grade Pay.

(ii) *Emoluments for Contract employees :* Rs. 13900/- P.M. as per details given in Column No.15-A.

5. **Whether “Selection” post or “non-selection” post.**—Non Selection

6. **Age for direct recruitment.**—Between 18 and 45 years:

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on *ad-hoc* or on contract basis:

Provided further that if a candidate appointed on *ad-hoc* basis or on contract basis had become over-age on the date he/she was appointed as such he/she shall not be eligible for any relaxation in the prescribed age limit by virtue of his/her such *adhoc* or contract appointment:

Provided further that upper age-limit is relaxable for Scheduled Castes/Scheduled Tribes/ Other Backward Classes and Other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government:

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government Servants before absorption in Public Sector/Corporations/Autonomous Bodies at the time of initial constitution of such Corporations/Autonomous Bodies shall be allowed, age concession in direct recruitment as admissible to Government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/Autonomous Bodies who were/are subsequently appointed by such Corporations/Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

Note.—Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting applications or notified to the Employment Exchanges or as the case may be.

7. Minimum Educational and other qualifications required for direct recruit(s):

(a) ESSENTIAL QUALIFICATIONS :

(i) Graduate in Science or B.E. Degree in any trade from a recognized University. (After selection the candidate will undergo the Basic Fire Fighting Course from the State Fire Training Centre followed by Sub-Fire Officer Course from the National Fire Services College, Nagpur).

(ii) Minimum Physical Standard :

Height-165 cms.
Chest-80 cms (with expansion upto 85 cms)
Weight-52 kg.
Eyesight-6/6 without glasses

(iii) Physical efficiency:

- a. 100 meters race in 15 seconds.
- b. High Jump 120 Cms.
- c. Broad jump 3 meters 60 Cms.
- d. 800 meters race in 3 Minutes.

(b) Desirable qualification(s):

Knowledge of customs, manner and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

8. Whether age and educational qualification (s) prescribed for direct recruit(s) will apply in the case of the promotee(s).—Age: Not applicable.

Educational qualification: Yes, as prescribed against Column No.11 below

9. Period of probation, if any.—(i) *Direct Recruitment:* (a) Two years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

(b) No probation in the case of appointment on contract basis, tenure basis, re-employment after superannuation and absorption.

(ii) *Promotion:* No probation

10. Method(s) of recruitment, whether by direct recruitment or by promotion/secondment/transfer and the percentage of post(s) to be filled in by various methods.—(i) 75% By promotion; and

(ii) 25% by direct recruitment on regular basis or by recruitment on contract basis, as the case may be.

11. In case of recruitment by promotion/secondment/transfer, grade for which promotion/secondment/transfer is to be made.—By promotion from amongst the leading Firemen who have qualified the Sub Fire Officer Course from the National Fire Service College, Nagpur with 03 years regular service or regular combined with continuous *ad hoc* service, if any, in the grade :

Provided that for filling up the posts of Sub Fire Officer the following 04 points post based roster shall be followed:—

Roster Point No.(s)	Category
1st, 2nd & 3rd	Promotee
4th	Direct Recruit

Note.—The roster will be repeated after every 4th point till the representation to all the categories is achieved upto the prescribed percentage. Thereafter the post is to be filled up from the category which vacates the post:

(1) Provided that for the purpose of promotion every employee shall have to serve atleast one term in the Tribal/Difficult/Hard areas and remote/rural areas subject to adequate number of posts (s) available in such areas:

Provided further that the proviso (1) *supra* shall not be applicable in the case of those employees who have five years or less service, left for superannuation, except posting/transfer in remote/ rural area. However, this condition of five years shall not be applicable in cases of promotion:

Provided further that Officers/Officials who have not served atleast one tenure in Tribal /Difficult/ Hard areas and remote/Rural areas shall be transferred to such area strictly in accordance with his/her seniority in the respective cadre.

Explanation I.—For the purpose of proviso (1) *supra* the “ term” in Tribal/Difficult/Hard areas/ remote /rural areas shall mean normally three years or less period of posting in such areas keeping in view the administrative exigencies/convenience.

Explanation II.—For the purpose of proviso (1) *supra* the Tribal/Difficult Areas shall be as under:—

1. District Lahaul&Spiti
2. Pangi and Bharmour Sub Division of Chamba District

3. Dodra Kwar Area of Rohru Sub-Division
4. Pandrah Bis Pargana, Munish Darkali and Gram Panchyat Kashpat, Gram Panchyats of Rampur Teshil of District Shimla.
5. Pandrah Bis Pargana of Kullu District
6. Bara Bhagal Areas Baijnath Sub Division of Kangra District
7. District Kinnaur
8. Kathwar and Korga Patwar Circles of Kamrau Sub Tehsil, Bhaladh Bhalona and Sangna Patwar Circles of Renukaji Tehsil and Kota Pub Patwar Circle of Shilai Tehsil, in Sirmaur District.
9. Khanyol-Bagra Patwar Circle of Karsog Tehsil, Gada-Gussaini, Mathyani, Ghanyar, Thachi, Baggi, Somgad and Kholanal of Bali-Chowki Sub Tehsil, Jharwar, Kutgarh, Graman, Devgarh, Trailla, Ropa, Kathog, Silh-Badhwani, Hastpur, Ghamrehar and Bhatehar Patwar Circle of Padhar Tehsil, Chiuni, Kalipar, Mangarh, Thach-Bagra, North Magru and South Margu Patwar Circles of Thunag Tehsil and Batwara Patwar Circle of Sunder Nagar Tehsil in Mandi District.

Explanation III.—For the purpose of Proviso (I) *supra* the Remote/Rural Areas shall be as under:—

- (1) All stations beyond the radius of 20 Kms. from Sub Division/Tehsil Headquarter
- (2) All stations beyond the radius of 15 Kms. from State Headquarter and District Headquarters where bus service is not available and on foot journey is more than 3 (three) Kms.
- (3) Home town or area adjoining to area at home town within the radius of 20Kms. of the employee regardless of its category.

(II) In all cases of promotion, the continuous *ad hoc* service rendered in the feeder post if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these rules for promotion subject to the condition that the *ad hoc* appointment/promotion in the feeder category had been made after following proper acceptable process of selection in accordance with the provisions of R & P Rules :

(i) Provided that in all cases where a junior person becomes eligible for consideration by virtue of his total length of service (including the service rendered on *ad hoc* basis followed by regular service/appointment) in the feeder post in view of the provisions referred to above, all persons senior to him/her in the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration:

Provided that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least three years or that prescribed in the Recruitment & Promotion Rules for the post, whichever is less:

Provided further that where a person becomes ineligible to be considered for promotion on account of the requirements of the preceding proviso, the person(s) junior to him shall also be deemed to be ineligible for consideration for such promotion.

Explanation.—The last proviso shall not render the junior incumbents ineligible for consideration for promotion if the senior ineligible persons happened to be Ex-servicemen who have joined Armed Force during the period of emergency and recruited under the provisions of Rule-3 of the Demobilized Armed Forces Personnel (Reservation of Vacancies in Himachal State Non-Technical Services) Rules, 1972 and having

been given the benefit of seniority thereunder or recruited under the provisions of Rule-3 of the Ex-servicemen (Reservation of vacancies in the Himachal Pradesh Technical Service) Rules, 1985 and having been given the benefit of seniority thereunder.

(ii) Similarly, in all cases of confirmation, continuous *adhoc* service rendered in the feeder post, if any, prior to the regular appointment against such posts shall be taken into account towards the length of service, if the *adhoc* appointment/promotion has been made after proper selection and in accordance with the provision of the Recruitment & Promotion Rules:

Provided that *inter-se*-seniority as a result of confirmation after taking into account, *adhoc* service rendered shall remain unchanged.

12. If a Departmental Promotion/Confirmation Committee exists, what is its composition.—As may be constituted by the Govt. from time to time.

13. Circumstances under which the H.P. Public Service Commission (H.P.P.S.C.) is to be consulted in making Recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be a Citizen of India.

15. Selection for appointment to the post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of merit of written examination followed by evaluation as specified in Appendix-I appended to these Rules, or if the Himachal Pradesh Public Service Commission or other recruiting agency/authority, as the case may be, so considers necessary or expedient on the basis of merit of written examination followed by evaluation as specified in Appendix-I appended to these Rules, preceded by a screening test (Objective type) or practical test or skill test or physical test, the standard/syllabus, etc. of which, will be determined by the Himachal Pradesh Public Service Commission/other recruiting agency/authority, as the case may be.

15-A Selection for appointment to the post by contract appointment.—Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:—

(I) CONCEPT:

(a) Under this policy the Sub Fire Officer, in the Department of Fire Services, Himachal Pradesh, will be engaged on contract basis initially for one year, which may be extendable on year to year basis:

Provided that for extension/renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then the period of contract is to be renewed/extended.

(b) POST FALLS WITHIN THE PURVIEW OF HPSSC:

The Director Fire Services, Himachal Pradesh after obtaining the approval of the Government to fill up the vacant post(s) on contract basis will place the requisition with the concerned recruiting agency *i.e.* Himachal Pradesh Staff Selection Commission, Hamirpur.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(II) CONTRACTUAL EMOLUMENTS:

The Sub Fire Officer appointed on contract basis will be paid consolidated fixed amount @ Rs.13900/- P.M. (which shall be equal to minimum of the pay band +grade pay). An amount of Rs.417/-(3 % of the minimum of the pay band + grade pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) APPOINTING/DISCIPLINARY AUTHORITY:

The Director Fire Services, Himachal Pradesh will be appointing and disciplinary authority

(IV) SELECTION PROCESS:

Selection for appointment to the post in the case of contract appointment shall be made on the basis of merit of written examination followed by evaluation as specified in Appendix-I to these Rules or if considered necessary or expedient on the basis of merit of written examination followed by evaluation as specified in Appendix-I to these Rules, preceded by a screening test (objective type) or practical test or skill test or physical test, the standard/syllabus, etc. of which, will be determined by the concerned recruiting agency *i.e.* Himachal Pradesh Staff Selection Commission, Hamirpur.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS:

As may be constituted by the concerned recruiting agency *i.e.* the **Himachal Pradesh Staff Selection Commission, Hamirpur**, from time to time.

(VI) AGREEMENT:

After selection of a candidate, he/she shall sign an agreement as per Appendix-II appended to these Rules.

(VII) TERMS AND CONDITIONS:

(a) The contractual appointee will be paid consolidated fixed contractual amount @ Rs.13900/- P.M/- (which shall be equal to minimum of the pay band +grade pay). The contract Appointee will be entitled for increase in contractual amount @ Rs. 417/- (3 % of the minimum of pay band + grade pay of the post) for further extended years and no other allied benefits such as junior/selection scales etc., will be given.

(b) The service of contract appointee will be purely on temporary basis. The Appointmen is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory. In case the contract appointee is not satisfied with the termination orders issued by the Appointing Authority, he/she may prefer an appeal before the Appellate Authority who shall be higher in rank to the Appointing Authority with in a period of 45 days, from the date on which a copy of termination orders is delivered to him/her.

(c) The contract appointee will be entitled for one day's casual leave after putting one month service, 10 days medical leave and 5 days special leave, in a calendar year. A female

contract appointee with less than two surviving children may be granted maternity leave for 180 days. A female contract appointee shall also be entitled for maternity leave not exceeding 45 days (irrespective of the number of surviving Children) during the entire service, in case of miscarriage including abortion, on production of medical certificate issued by the authorized Government Medical Officer. A contract employee shall not be entitled for Medical Re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contract appointee. Un-availed casual leave, medical leave and special leave can be accumulated upto the calendar year and will not be carried forward for the next calendar year.

(d) Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. However, in exceptional cases where the circumstances for un-authorized absence from duty were beyond his/her control on medical grounds, such period shall not be excluded while considering his/her case for regularization but the incumbent shall have to intimate the controlling authority in this regard well in time. However, the contract appointee shall not be entitled for contractual amount for this period of absence from duty:

Provided that he/she shall submit the certificate of illness/fitness issued by the Medical Officer, as per prevailing instructions of the Government.

(e) An official appointed on contract basis, who has completed three years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness issued by a Medical Board in the case of a Gazetted Government servant and by Government Medical Officer in the case of a Non-Gazetted Government Servant. In case of women candidates who are to be appointed against posts carrying hazardous nature of duties, and in case they have to complete a period of training as condition of service such woman candidate, who as a result of tests is found to be pregnant of twelve weeks standing or more shall be declared temporarily unfit and her appointment shall be held in abeyance until the confinement is over. Such Woman candidate be re-examined for medical fitness six weeks after the date of confinement, and if she is found fit on production of medical fitness certificate from the authority as specified above, she may be appointed to the post kept reserved for her.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart officials at the minimum of the pay scale.

(h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension rules & Conduct rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. The Employees Group Insurance Scheme as well as EPF/GPF will also not be applicable to contract appointee(s).

16. Reservation.—The appointment to the service shall be subject to the orders regarding reservation in the service for Scheduled Castes/Scheduled Tribes/Backward classes/other categories of persons issued by the Himachal Pradesh Government from time-to-time.

17. Departmental Examination.—Not applicable.

18. Powers to Relax.—Where the State Govt. is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with

the H.P. Public Service Commission, relax any of the provision(s) of these Rules with respect to any class or category of person(s) or post(s).

APPENDIX-I

WRITTEN EXAMINATION			85 Marks
1.	(Percentage of marks obtained in written examination to be calculated out of 85 marks. For example, a candidate getting 50% marks in written examination will be given 42.5 marks)		
2.	Evaluation of candidate to be made in the following manner :—		15 Marks
(i)	Weightage for the minimum educational qualification prescribed in the Recruitment & Promotion Rules (Percentage of marks obtained in the educational qualification would be multiplied by 0.025 for example, an individual has secured 50% marks in the required educational qualification, he/she will be allowed 1.25 Marks(50 x 0.025= 1.25)	2.5 Marks	
(ii)	Belonging to notified Backward Area or Panchayat, as the case may be	01 Mark	
(iii)	Land less family/family having land less than 1 Hectare to be certified by the concerned Revenue Authority	01 Mark	
(iv)	Non-employment Certificate to the effect that none of the family members in Government/Semi Government service	01 Mark	
(v)	Differently abled persons with more than 40% impairment/disability/infirmity	01 Mark	
(vi)	NSS (atleast one year)/certificate holders in NCC/The Bharat Scout and Guide/Medal winner in National level sports competitions	01 Mark	
(vii)	BPL family having annual income (from all sources) below Rs. 40,000/- or as prescribed by the Government from time to time	02 Marks	
(viii)	Widow/divorced/destitute/single woman	01 Mark	
(ix)	Single daughter/Orphan	01 Mark	
(x)	Training of atleast 6 months duration related to the post applied for from a recognized University/Institution	01Mark	
(xi)	Experience upto a maximum of 5 years in Government/Semi Government Organization relating to the post applied for (0.5 Marks only for each completed year)	2.5 Marks	

APPENDIX-II

FORM OF CONTRACT/AGREEMENT TO BE EXECUTED BETWEEN THE SUB FIRE OFFICER AND THE GOVERNMENT OF HIMACHAL PRADESH THROUGH THE DIRECTOR FIRE SERVICES, HIMACHAL PRADESH

This agreement is made on thisday of In the year.....Between Sh./Smt.....s/o/d/o Shri..... r/o.....Contract

appointee (hereinafter called the "FIRST PARTY") AND THE DIRECTOR FIRE SERVICES, HIMACHAL PRADESH, SHIMLA (here-in-after the "SECOND PARTY").

Whereas, the SECOND PARTY has engaged the "FIRST PARTY" aforesaid "FIRST PARTY" and the "FIRST PARTY" has agreed to serve as a SUB FIRE OFFICER on contract basis on the following terms and conditions:—

1. That the "FIRST PARTY" shall remain in the service of the "SECOND PARTY" as a SUB FIRE OFFICER for a period of 1 year commencing on day ofand ending on the day ofIt is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall *ipsofacto* stand terminated on the last working day *i.e.* onand information notice shall not be necessary:

Provided that for further extension /renewal of contract period the HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only then the period of contract is to be renewed/extended.

2. The contractual amount of the "FIRST PARTY" will be Rs...13,900/- per month

3. The service of contract appointee will be purely on temporary basis. The Appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory. In case the contract appointee is not satisfied with the termination orders issued by the Appointing Authority, he/she may prefer an appeal before the Appellate Authority who shall be higher in rank to the Appointing Authority with in a period of 45 days, from the date on which a copy of termination orders is delivered to him/her.

4. "The contract appointee will be entitled for one day's casual leave after putting one month's service 10 days' medical leave and 5 days' special leave, in a calendar year. A female contract appointee with less than two surviving children may be granted maternity leave for 180 days. A female contract appointee shall also be entitled for maternity leave not exceeding 45 days' (irrespective of the number of surviving children) during the entire service, in case of miscarriage including abortion, on production of medical certificate issued by the authorized Government Medical Officer. A contract employee shall not be entitled for medical re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contract appointee.

Un-availed casual leave, medical leave and special leave can be accumulated upto the calendar year and will not be carried forward for the next calendar year:

5. Unauthorized absence from duty without the approval of the controlling officer shall automatically lead to the termination of the contract. However, in exceptional cases where the circumstances for un-authorized absence from duty were beyond his/her control on medical grounds, such period shall not be excluded while considering his/her case for regularization but the incumbent shall have to intimate the controlling authority in this regard well in time. However, the contract appointee shall not be entitled for contractual amount for this period of absence from duty:

Provided that he/she shall submit the certificate of illness/fitness issued by the Medical Officer, as per prevailing instructions of the Government.

6. An official appointed on contract basis who have completed Three years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

7. Selected candidate will have to submit a certificate of his/her fitness issued by a Medical Board in case of a Gazetted Government servant and by Government Medical Officer in the case of a Non Gazetted Government servant. In case of women candidates who are to be appointed against posts carrying hazardous nature of duties and in case they have to complete a period of training as a condition of service such woman candidate, who as a result of tests is found to be pregnant of twelve weeks' standing or more shall be declared temporarily unfit and her appointment shall be held in abeyance until the confinement is over. Such woman candidate be re-examined for medical fitness six weeks after the date of confinement, and if she is found fit on production of medical fitness certificate from the authority as specified above, she may be appointed to the post kept reserved for her.

8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counter-part official at the minimum of pay scale.

9. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to contractual appointee(s).

IN WITNESS THE FIRST PARTY AND SECOND PARTY have here in to set their hands the day month and year first, above written

IN THE PRESENCE OF WITNESS:

1. _____

 (Name and full Address) (Signature of the FIRST PARTY)

2. _____

 (Name and full Address)

IN THE PRESENCE OF WITNESS

1. _____

 (Name and full Address) (Signature of the FIRST PARTY)

2. _____

 (Name and full Address)

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 20th April, 2019

No. Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order

the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	388/16	Poonam	E.E. HPPWD, Killar	02-01-2019
2.	501/15	Karam Lal	E.E. HPPWD, Killar	03-01-2019
3.	564/15	Thakur Lal	E.E. I&PH/HPPWD, Killar	04-01-2019
4.	789/16	Om Prakash	E.E. HPPWD, Nurpur	05-01-2019
5.	116/16	Pyar Dei	E.E. I&PH, Pangi	05-01-2019
6.	59/16	Ved Vyas	E.E. HPPWD, Killar	07-01-2019
7.	102/18	Gulshan Samotia	E.E. HPSEBL, Fatehpur	14-01-2019
8.	74/16	Charan Dass	E.E. HPPWD, Killar	14-01-2019
9.	10/16	Janto Devi	E.E. HPPWD, Killar	15-01-2019
10.	170/16	Man Singh	E.E. HPPWD, Killar	15-01-2019
11.	45/15	Sukri Devi	E.E. HPPWD, Dharampur	17-01-2019
12.	78/17	Ramesh Kumar	R.E. HPSEBL, Joginder Nagar	18-01-2019
13.	125/16	Uttam Dei	E.E. I&PH/HPPWD, Killar	21-01-2019
14.	603/15	Sunri	E.E. HPPWD, Killar	21-01-2019
15.	338/16	Devi Singh	E.E. I&PH, Killar	22-01-2019
16.	569/16	Ratto Devi	E.E. HPPWD, Killar	22-01-2019
17.	243/16	Begmu	E.E. I&PH/HPPWD, Killar	22-01-2019
18.	306/16	Prem Singh	E.E.I & PH/HPPWD, Killar	23-01-2019
19.	21/16	Shanti	E.E.I & PH/HPPWD, Killar	23-01-2019
20.	563/15	Nur Dei	E.E. I & PH/HPPWD, Killar	24-01-2019
21.	629/16	Bimla Devi	E.E. HPPWD, Killar	24-01-2019

By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA
(H.P.)**

Ref. No. : 388/2016
Date of Institution : 01-06-2016
Date of Decision : 02-01-2019

Smt. Poonam w/o Shri Roop Singh, r/o V.P.O. Dharwas, Tehsil Pangi, District Chamba,
H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar (Pangi), District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv. For the Respondent
: Sh. Sanjeev Singh Rana, D.A.

AWARD

The appropriate government seeks adjudication by this Court on the following point of Reference:—

“Whether alleged termination of services of Smt. Poonam, w/o Shri Roop Singh, r/o V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. during 2005 by the Executive Engineer, H.P.P.W.D. Killar Division (Pangi), District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute *vide* demand notice dated nil received in Labour Office Chamba on 23-09-2012 after lapse of 7 years. If not, keeping in view delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1996. She continuously worked with intermittent breaks upto the year, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldar. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram,

Chunku, Budhi Ram and Dev Raj. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1995 and who remained engaged till the year 1996. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangti Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 1996, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 16 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 14-11-2017:

- (1) Whether termination of services of the petitioner by the respondent during the year 2005 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? .. *OPP.*

(3) Whether the claim petition is not maintainable in the present form? ..OPR.

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Poonam appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of seniority list Ex. PW1/B & copy of demand notice Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ` 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Poonam (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, she denied that she had been engaged as a daily waged beldar from June, 1995 upto November, 1996. She also specifically denied that in between she of her own had been absenting herself. Volunteered that, she had worked from the year 1996 upto the year 2004. She categorically denied that after November, 1996, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in November, 1996 and thereafter had never returned to work. However, she admitted that the respondent had never given fictional breaks to her. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

12. Ex. PW1/B is the copy of mandays chart relating to Sh. Suraj Ram & ors.

13. Ex. PW1/C is the copy of demand notice served upon the respondent by the petitioner.

14. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

15. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

16. Ex. RW1/B is the mandays chart relating to the petitioner.

17. Ex. RW1/C is the mandays chart relating to the co-workers.

18. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1996 and had worked as such till October, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1995 and she had worked as such upto the year 1996. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the month of June, 1995 by the respondent and had worked only upto November, 1996, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of June, 1995 for the first time as daily waged beldar and she had only worked as such upto November, 1996. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1996 and that she had worked upto the year 2004, as claimed.

19. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 87½ days in the year 1995 and for 139 days in the year 1996. Thus, in her total service for a period of two years in between June, 1995 to November, 1996, she had only worked for 226.5 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2004. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to her by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from date of her termination. It is evident from the mandays chart that in the year 1996 the petitioner had only worked for 139 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

20. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is

nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

21. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and three others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Suraj Ram were engaged in the year 1997, while those of Shri Chunku in the year 2000 and that of Shri Budhi Ram in the year 2001. Of course, a note has been given on Ex. RW1/C that all these four workers were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is June, 1995. There is nothing on record to show that S/Shri Suraj Ram, Chunku and Budhi Ram were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

22. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

23. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

24. While testifying in the Court as PW1, the petitioner has given her age as 36 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that besides having landed property, she was privately engaged as a labourer. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

25. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District***

Mandi, H.P. vs. Dilu Ram (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

26. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned by our own Hon’ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon’ble Supreme Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

27. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99(Lab.) ID/2016/Chamba, dated May, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

28. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon’ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all the relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon’ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 226.5 days as per mandays chart on record and that the services of petitioner were disengaged in November, 1996, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about **sixteen years i.e.** demand notice was given on 20-9-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 36 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and

the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

29. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

30. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

31. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of January, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 501/2015
Date of Institution	: 09-11-2015
Date of Decision	: 03-01-2019

Shri Karam Lal s/o Shri Chanau, r/o Village Bhakhaun, P.O. Karyuni, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar (Pangi), District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Karam Lal s/o Shri Chanau, r/o Village Bhakhaun, P.O. Karyuni, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 02-01-2012 regarding his alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, whether termination of services of Shri Karam Lal s/o Shri Chanau, r/o Village Bhakhaun, P.O. Karyuni, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1992. He continuously worked with intermittent breaks upto the year, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram, Chunku, Budhi Ram and Dev Raj. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1999 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2012, *i.e.* after about 8 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 29-4-2016:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 02-01-2012 *qua* his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP.*
- (2) Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ..*OPP.*
- (3) If issue No. 2 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

(4) Whether the claim petition is not maintainable in the present form?

..OPR.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Karam Lal appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of demand notice, Ex. PW1/B & copy of seniority list Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the Learned Counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ` 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Karam Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he had been engaged as a daily waged beldar from May, 1999 upto September, 2004. He also specifically denied that in between he of his own had been absenting himself. Volunteered that, he had worked from the year 1992 upto October, 2004. He categorically denied that after September, 2004, he had never worked with the respondent/department. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He further denied that he of his own left the job in September, 2004 and thereafter had never returned to work. However, he admitted that the respondent had never given fictional breaks to him. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He specifically denied that the co-workers have been re-engaged as per the orders of the Court.

12. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

13. Ex. PW1/C is the copy of mandays chart relating to Sh. Suraj Ram & ors.

14. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

15. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

16. Ex. RW1/B is the mandays chart relating to the petitioner.

17. Ex. RW1/C is the mandays chart relating to the co-workers.

18. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1992 and had worked as such till October, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1999 and he had worked as such upto September, 2004. Although, the petitioner (PW1) in his cross-examination denied the fact that he had been engaged in the month of May, 1999 by the respondent and had worked only upto September, 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of May, 1999 for the first time as daily waged beldar and he had only worked as such upto September, 2004. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1992 and that he had worked upto October, 2004, as claimed.

19. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 128 days in the year 1999, 144 days in the year 2000, 133 days in the year 2001, 134 days in the year 2002, 108 days in the year 2003 and for 103 days in the year 2004. Thus, in his total service for a period of six years in between May, 1999 to September, 2004, he had only worked for 750 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in September, 2004. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to him by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from date of his termination. It is evident from the mandays chart that in the year 2004 the petitioner had only worked for 103 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

20. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to

be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

21. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and three others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Suraj Ram were engaged in the year 1997, while those of Shri Chunku in the year 2000 and that of Shri Budhi Ram in the year 2001. Of course, a note has been given on Ex. RW1/C that all these four workers were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1999. There is nothing on record to show that S/Shri Chunku and Budhi Ram were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

22. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

23. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-*cum*-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-*cum*-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

24. While testifying in the Court as PW1, the petitioner has given his age as 53 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he was having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

25. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of

delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)...”

26. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

27. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99(Lab.) ID/2014/Chamba, dated 31st October, 2015. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

28. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 750 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about ***eight years i.e.*** demand notice was

given on 02-01-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 53 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

29. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No.1 is answered in the negative and against the respondent.

Issue No. 4:

30. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

31. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of January, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRIYOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 564/2015
Date of Institution : 04-12-2015

Date of Decision

: 04-01-2019

Shri Thakur Lal s/o Shri Shounki Ram, r/o Village Findpur, P.O. Sach, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, Killar Division, I.& P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Thakur Lal s/o Shri Shounki Ram, r/o Village Findpur, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 23-11-2011 regarding his alleged illegal termination of service during September, 1995 suffers from the vice of delay and laches? If not, Whether termination of the Shri Thakur Lal s/o Shri Shounki Ram, r/o Village Findpur, P.O. Sach, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during September, 1995 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged Supervisor and Mate on muster roll basis, without any appointment letter, in the year 1983. He continuously worked with intermittent breaks upto October, 1995 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Gurdev, Balwant, Sher Singh, Jai Dass, Tek Chand, Trilok Chand, Hari Ram and Raj Kumar. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all

consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1989 and who remained engaged till the year 1994. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 1994, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2011, *i.e.* after about 17 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 05-10-2017:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 23-11-2011 *qua* his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? ..OPP.
- (2) Whether termination of the services of petitioner by the respondent during Sept., 1994 is/was illegal and unjustified as alleged? ..OPP.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.

(4) Whether the claim petition is not maintainable in the present form?

..OPR.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Thakur Lal appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copy of demand notice Ex. PW1/B. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump-sum compensation of ` 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Thakur Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he had been engaged as a daily wage beldar from October, 1989 upto July, 1994. He also specifically denied that in between he of his own had been absenting himself. Volunteered that, he had worked from the year 1989 upto September, 1995. He categorically denied that after July, 1994, he had never worked with the respondent/department. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He further denied that he of his own left the job in July, 1994 and thereafter had never returned to work. However, he admitted that the respondent had never given fictional breaks to him. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He specifically denied that the co-workers have been re-engaged as per the orders of the Court.

12. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

13. Conversely, Shri B.K. Kapil, Executive Engineer, H.P.P.W.D., Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

14. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

15. Ex. RW1/B is the mandays chart relating to the petitioner.

16. Ex. RW1/C is the mandays chart relating to the co-workers.

17. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1983 and had worked as such till September, 1995. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1989 and he had worked as such upto July, 1994. Although, the petitioner (PW1) in his cross-examination denied the fact that he had been engaged in the month of October, 1989 by the respondent and had worked only upto July, 1994, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of October, 1989 for the first time as daily waged beldar and he had only worked as such upto July, 1994. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1983 and that he had worked upto October, 1995, as claimed.

18. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 48 days in the year 1989, 77 days in the year 1990, 92 days in the year 1991 and for 28 days in the year 1994. Thus, in his total service for a period of four years in between October, 1989 to July, 1994, he had only worked for 245 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 1995. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to him by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from date of his termination. It is evident from the mandays chart that in the year 1994 the petitioner had only worked for 28 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

19. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1)

clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and seventeen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Balwant Kumar were engaged in the year 1994, those of Shri Bameshwar Dutt were engaged in the year 1995, those of S/Shri Raj Kumar and Sher Singh in the year 1996, those of S/Shri Suraj Ram, Parkash Chand, Hari Ram, Chuni Lal and Smt. Sarita Devi were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku in the year 2000 and that of Shri Budhi Ram in the year 2001. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Parkash Chand mentioned at serial No. 5, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is October, 1989. There is nothing on record to show that S/Shri Chunku and Budhi Ram were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

21. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

22. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

23. While testifying in the Court as PW1, the petitioner has given his age as 50 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he is having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

24. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

25. In *Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160*, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82* that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh vide his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No. 11-5/99(Lab.)ID/2015/Chamba, dated 27th November, 2015. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

27. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in *2013 (136) FLR 893 (SC)*, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 245 days as per mandays chart on record and that the services of petitioner were disengaged in July, 1994, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about *seventeen years* i.e. demand notice was given on 23-11-2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 50 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in *Geetam Singh's* case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No.1 is answered in the negative and against the respondent.

Issue No. 4:

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of January, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 789/16

Sh. Om Prakash s/o Shri Sahib Singh, r/o Village Sadwan, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D, Division Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D, Division Jawali, District Kangra, H.P.

..Respondents.

05-01-2019 Present: Sh. Mukul Vaid, Adv. for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondents.

Ld. csl. for the petitioner has made a statement that he does not want to pursue this case. Statement recorded and placed on file. In view of the separate statement made by Ld. Csl. for the petitioner, this reference No. 789/16 is dismissed as withdrawan.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
05-01-2019

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 116/2016
Date of Institution : 04-03-2016
Date of Decision : 05-01-2019

Miss Pyar Dei d/o Smt. Hoggi Devi, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, IPH Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The appropriate government seeks adjudication by this Court on the following point of Reference:—

“Whether alleged termination of services of Miss Pyar Dei, d/o Smt. Hoggi Devi, Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. from 2004 by the Executive Engineer, I.P.H. Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 88 days, 104 days, 48

days, 62 days, 111 days, 28 days, during the year 1999, 2000, 2001, 2002, 2003 and 2004, and had raised her industrial dispute *vide* demand notice dated Nil (received on 11-06-2012) after delay of more than 8 years, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period during the year 1999 to 2004 and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1996. She continuously worked with intermittent breaks upto October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram, Chunku, Budhi Ram, Dev Raj and Bameshwar Dutt. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to."

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1999 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of

persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 06-3-2018:

- (1) Whether termination of the services of the petitioner by the respondent during year, 2004 is/was improper and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Miss Pyar Dei appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of demand notice Ex. PW1/B & copy of seniority list Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No

Relief. : Petition is partly allowed awarding lump-sum compensation of ` 50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Miss Pyar Dei (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, she denied that she had been engaged as a daily waged beldar from June, 1999 upto August, 2004. She also specifically denied that in between she of her own had been absenting herself. Volunteered that, she had worked from the year 1996 upto October, 2005. She categorically denied that after August, 2004, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in August, 2004 and thereafter had never returned to work. However, she admitted that the respondent had never given fictional breaks to her. She works as and agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

12. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

13. Ex. PW1/C is the copy of mandays chart relating to Tek Chand & ors.

14. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

15. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

16. Ex. RW1/B is the mandays chart relating to the petitioner.

17. Ex. RW1/C is the mandays chart relating to the co-workers.

18. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1996 and had worked as such till October, 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1999 and she had worked as such upto August, 2004. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the month of June, 1999

by the respondent and had worked only upto August, 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of June, 1999 for the first time as daily waged beldar and she had only worked as such upto August, 2004. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1996 and that she had worked upto the year 2005, as claimed.

19. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 88 days in the year 1999, 104 days in the year 2000, 48 days in the year 2001, 62 days in the year 2002, 111 days in the year 2003 and for 28 days in the year 2004. Thus, in her total service for a period of six years in between June, 1999 to August, 2004, she had only worked for 441 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to her by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 2004 the petitioner had only worked for 28 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

20. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

21. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and three others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Suraj Ram were engaged in the year 1997, while those of Shri Chunku in the year 2000 and that of Shri Budhi Ram in the year 2001. Of course, a note has been given on Ex. RW1/C that all these four workers were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is June, 1999. There is nothing on record to show that S/Shri Chunku and Budhi Ram were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

22. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

23. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-*cum*-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-*cum*-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of the petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

24. While testifying in the Court as PW1, the petitioner has given her age as 41 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that she was having landed property. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

25. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

26. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

27. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-*cum*-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour

Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-5/99(Lab)ID/2016/Chamba, dated 8th February, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

28. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all the relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 441 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 18-1-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 41 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

29. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

30. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

31. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 50,000/-

(Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of January, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 59/2016
Date of Institution : 20-02-2016
Date of Decision : 07-01-2019

Shri Ved Vyas s/o Shri Kishan Chand, r/o Village Shagli, P.O. Kothi, Tehsil Pangli, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangli), District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv. For the Respondent
: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Ved Vyas s/o Shri Kishan Chand, r/o Village Shagli, P.O. Kothi, Tehsil Pangli, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangli), District Chamba, H.P. *vide* demand notice dated nil received in the Labour Office Chamba on 31-10-2011 regarding his alleged illegal termination of services during October, 2005 suffers from delay and laches? If not, Whether termination of services of Shri Ved Vyas s/o Shri Kishan Chand, r/o Village Shagli, P.O. Kothi, Tehsil Pangli, District

Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during October, 2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1991. He continuously worked with intermittent breaks upto October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Suraj Ram, Chunku, Budhi Ram and Dev Raj. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to."

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1998 and who remained engaged till the year 2005. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated

the principle of 'last come first go'. If the petitioner had been terminated in the year 2005, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2011, *i.e.* after about 6 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 22-8-2017:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during Oct., 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP.*
- (2) Whether termination of the services of petitioner by the respondent during October, 2005 is/was illegal and unjustified as alleged? ..*OPP.*
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Ved Vyas appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of demand notice, Ex. PW1/B & copy of seniority list Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the Learned Counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ` 1,25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Ved Vyas (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he had been engaged as a daily waged beldar from July, 1998 upto October, 2005. He also specifically denied that in between he of his own had been absenting himself. Volunteered that, he had worked from the year 1991 upto October, 2005. He categorically denied that after October, 2005, he had never worked with the respondent/department. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He further denied that he of his own left the job in October, 2005 and thereafter had never returned to work. However, he admitted that the respondent had never given fictional breaks to him. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He specifically denied that the co-workers have been re- engaged as per the orders of the Court.

12. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

13. Ex. PW1/C is the copy of mandays chart relating to Sh. Suraj Ram & ors.

14. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

15. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

16. Ex. RW1/B is the mandays chart relating to the petitioner.

17. Ex. RW1/C is the mandays chart relating to the co-workers.

18. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1991 and had worked as such till October, 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1998 and he had worked as such upto October, 2005. Although, the petitioner (PW1) in his cross- examination denied the fact that he had been engaged in the month of July, 1998 by the respondent and had worked only upto October, 2005, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of

July, 1998 for the first time as daily waged beldar and he had only worked as such upto October, 2005. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1991 and that he had worked upto October, 2005, as claimed.

19. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 115 days in the year 1998, 120 days in the year 1999, 145 days in the year 2000, 121 days in the year 2001, 136 days in the year 2002, 115 days in the year 2003, 81 days in the year 2004 and for 73 days in the year 2005. Thus, in his total service for a period of eight years in between July, 1998 to October, 2005, he had only worked for 906 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to him by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that in the year 2005 the petitioner had only worked for 73 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

20. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

21. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and three others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Suraj Ram were engaged in the year 1997, while those of Shri Chunku in the year 2000 and that of Shri Budhi Ram in the year 2001. Of course, a note has been given on Ex. RW1/C that all these four workers were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is July, 1998. There is nothing on record to show that S/Shri Chunku and Budhi Ram were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

22. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

23. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of the petitioner that they were juniors to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

24. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he was having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

25. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

26. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

27. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour

Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99(Lab.) ID/2012/Chamba, dated 27th January, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

28. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 906 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2005, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about *six years i.e.* demand notice was given 20-10-2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 45 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

29. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No.1 is answered in the negative and against the respondent.

Issue No. 4:

30. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

31. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ` 1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of January, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. 102/18

Sh. Gulshan Samotia s/o Sh. Khajan Chand, r/o V.P.O. Bhapoo, Tehsil Indora, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.S.E.B.L. Division, Fatehpur, District Kangra, H.P.
2. The Vigilant Hawks, 186, Defense Colony, P.O. Jandwal, District Pathankot, Punjab(contractor). *..Respondents.*

14-01-2019 Present: Petitioner in person.
None for the respondents.

Today petitioner has made a statement that he does not want to pursue this case. Statement recorded and placed on file. In view of the separate statement made by the petitioner, this reference No. 102/18 is dismissed as withdrawn.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate

Government for information and further necessary action/publication. The file, after due completion be consigned to the records.

Announced:
14-01-2019

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 74/2016
Date of Institution : 20-02-2016
Date of Decision : 14-01-2019

Shri Charan Dass s/o Shri Kishan Chand, r/o Village Shagli, P.O. Kothi, Tehsil Pangi,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba,
H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv. For the Respondent
: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Charan Dass s/o Shri Kishan Chand, r/o Village Shagli, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated nil received in the Labour Office Chamba on 31-10-2011 regarding his alleged illegal termination of services during June, 2004 suffers from delay and laches? If not, whether termination of services of Shri Charan Dass s/o Shri Kishan Chand, r/o Village Shagli, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Divisions, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during June, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1991. He continuously worked with intermittent breaks upto October, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names

of the juniors, who were retained in service by the respondent are S/Shri Suraj Ram, Chunku, Budhi Ram and Dev Raj. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 2001 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2011, *i.e.* after about 7 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 22-8-2017:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice nil *qua* his termination of service during June, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.

- (2) Whether termination of the services of petitioner by the respondent during June, 2004 is/was illegal and unjustified as alleged? ..*OPP.*
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Charan Dass appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of demand notice Ex. PW1/B & copy of seniority list Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ` 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Charan Dass (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he had been engaged as a daily waged beldar from June, 2001 upto June, 2004. He also specifically denied that in between he of his own had been absenting himself. Volunteered that, he had worked from the year 1991 upto October, 2004. He categorically denied that after June, 2004, he had never worked with the respondent/department. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He further denied that he of his own left the job in June, 2004 and thereafter had never returned to work. However, he admitted that the respondent had never given fictional breaks to him. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He specifically denied that the co-workers have been re-engaged as per the orders of the Court.

12. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

13. Ex. PW1/C is the copy of mandays chart relating to Sh. Suraj Ram & ors.

14. Conversely, Shri B.K. Kapil, Executive Engineer, H.P.P.W.D., Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

15. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

16. Ex. RW1/B is the mandays chart relating to the petitioner.

17. Ex. RW1/C is the mandays chart relating to the co-workers.

18. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1991 and had worked as such till October, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in June, 2001 and he had worked as such upto June, 2004. Although, the petitioner (PW1) in his cross-examination denied the fact that he had been engaged in the month of June, 2001 by the respondent and had worked only upto June, 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of June, 2001 for the first time as daily waged beldar and he had only worked as such upto June, 2004. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1991 and that he had worked upto October, 2004, as claimed.

19. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 109 days in the year 2001, 115 days in the year 2002, 61 days in the year 2003 and for 28 days in the year 2004. Thus, in his total service for a period of four years in between June, 2001 to June, 2004, he had only worked for 313 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2004. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to him by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that in the year 2004 the petitioner had only worked for 28 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

20. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

21. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and three others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Suraj Ram were engaged in the year 1997, while those of Shri Chunku in the year 2000 and that of Shri Budhi Ram in the year 2001. As per the mandays chart of the co-workers placed on the file as Ex. PW1/C, one of Smt. Ram Dei mentioned at serial No. 11 was initially appointed as beldar in the year 2003. Of course, notes have been given on Ex. RW1/C and Ex. PW1/C that all these workers (except for Shri Parkash Chand mentioned at serial No. 5 on Ex. PW1/C), were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is June, 2001. There is nothing on record to show that Shri Budhi Ram and Smt. Ram Dei were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

22. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

23. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-*cum*-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-*cum*-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

24. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he is having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

25. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

26. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

27. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99 (Lab.) ID/2012/Chamba, dated 27th January, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

28. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually

worked for 313 days as per mandays chart on record and that the services of petitioner were disengaged in June, 2004, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about *seven years* i.e. demand notice was given on 20-10-2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 48 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

29. In view the discussion and findings arrived at by me above, a lump-sum compensation of ` 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No. 1 is answered in the negative and against the respondent.

Issue No. 4:

30. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

31. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 10/2016
Date of Institution : 02-1-2016
Date of Decision : 15-01-2019

Smt. Janto Devi d/o Shri Jai Lal, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, Killar Division, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Janto Devi d/o Shri Jai Lal, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 6-12-2011 regarding her alleged illegal termination of service during October, 2002 suffers from delay and laches? If not, Whether termination of the services of Smt. Janto Devi d/o Shri Jai Lal, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2002, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1994. She continuously worked with intermittent breaks upto December, 2002 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The

names of the juniors, who were retained in service by the respondent are S/Smt./Shri Gurdev, Man Dei, Sher Singh, Balwant, Dila Ram, Tek Chand, Bhag Dei, Ram Dei, Dev Raj and Bameshwar Dutt. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who remained engaged till the year 2002. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 2002, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2011, *i.e.* after about 09 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12-6-2018:—

- (1) Whether industrial dispute raised by petitioner *vide* demand notice dated 6-12-2011 *qua* her termination of service during October, 2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP.*

- (2) Whether termination of service of petitioner by the respondent during October, 2002 is/was legal and justified? ..*OPP*.
- (3) If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form? ..*OPR*.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Janto Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A and copy of seniority list Ex. PW1/B. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ` 1,30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Janto Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, she denied that she had been engaged as a daily waged beldar from June, 1994 upto October, 2002. She also specifically denied that in between she of her own had been absenting herself. Volunteered that, she had worked from the year 1994 upto October, 2002. She categorically denied that after October, 2002, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in October, 2002 and thereafter had never returned to work. However, she admitted that the respondent had never given fictional breaks to him. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re- engaged as per the orders of the Court.

12. Ex. PW1/B is the copy of seniority list relating to Shri Suraj Ram and others.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

14. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were reengaged, the petitioner had not been called for work.

15. Ex. RW1/B is the mandays chart relating to the petitioner.

16. Ex. RW1/C is the mandays chart relating to the co-workers.

17. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1994 and had worked as such till December, 2002. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1994 and she had worked as such upto 2002. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the month of June, 1994 by the respondent and had worked only upto October, 2002, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of June, 1994 for the first time as daily waged beldar and she had only worked as such upto October, 2002. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1994 and that she had worked upto December, 2002, as claimed.

18. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 177 days in the year 1994, 150 days in the year 1995, 148 days in the year 1996, 172 days in the year 1997, 167 days in the year 1998, 140½ days in the year 1999, 152½ days in the year 2000 142 days in the year 2001 and for 152 days in the year 2002. Thus, in her total service for a period of nine years in between June, 1994 to October, 2002, she had only worked for 1401 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in December, 2002. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to her by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 2002 the petitioner had only worked for 152 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

19. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and seventeen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Balwant Kumar were engaged in the year 1994, those of Shri Bameshwar Dutt were engaged in the year 1995, those of S/Shri Raj Kumar and Sher Singh in the year 1996, those of S/Shri Suraj Ram, Parkash Chand, Hari Ram, Chuni Lal and Smt. Sarita Devi were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku in the year 2000, those of Shri Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Parkash Chand mentioned at serial No.5, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is June, 1994. There is nothing on record to show that S/Shri Suraj Ram, Jai Dass, Tek Chand, Chunku Ram, Parkash Chand, Budhi Ram, Bameshwar Dutt, Raj Kumar, Smt. Bhag Dei, Smt. Ram Dei, Smt. Sarita Devi, Hari Ram, Baldev, Balwant Kumar, Sher Singh and Chuni Lal were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

21. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

22. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

23. While testifying in the Court as PW1, the petitioner has given her age as 55 years. It is well known that a person like the petitioner will not sit at home during the period she

is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that she is having landed property. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

24. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

25. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Anot her, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* her report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99(Lab.)ID/2015/Chamba, dated 17th December, 2015. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

27. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised

industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 1401 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2002, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** i.e. demand notice was given on 06-12-2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 55 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 1,30,000/- (Rupees one lakh thirty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No.1 is answered in the negative and against the respondent.

Issue No. 4:

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 1,30,000/- (Rupees one lakh thirty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 170/2016
Date of Institution : 17-3-2016
Date of Decision : 15-01-2019

Shri Man Singh s/o Shri Ram Nath, r/o Village Tatan, P.O. Karyas, Tehsil Pangi,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba,
H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Man Singh s/o Shri Ram Nath, r/o Village Tatan, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated nil received in the Labour Office Chamba on 23-06-2012 regarding alleged illegal termination of his services during October, 2001 suffers from delay and laches? If not, whether termination of services of Shri Man Singh s/o Shri Ram Nath, r/o Village Tatan, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during October, 2001, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis in the month of November, 1994. He continuously worked with intermittent breaks upto October, 2001 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25 -B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were

retained in service by the respondent are S/Shri Hukkam Chand, Suraj Ram, Ludder Singh, Karam Dev, Mohinder Kumar, Jai Dass, Tek Chand, Sucheta Ram, Mohan Lal, Hari Nath, Janam Singh, Smt. Jamna, S/Shri Raj Kumar and Man Singh, S/Smt. Sarita Devi, Chhin Dei, Bhag Dei, Sur Dei, Shaymi, S/Shri Chunku Ram, Budhi Ram, Hari Ram, Budhi Ram, Smt. Ram Dei, S/Shri Sham Lal, Dev Raj, Gautam Singh and Bameshwar. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who remained engaged till the year 1999. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 25 & 27 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 1999, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2012, *i.e.* after about 13 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 07-3-2018:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service during Oct., 2001 by respondent suffers from the vice of delay and laches as alleged? ..*OPR.*
- (2) Whether termination of the services of petitioner by the respondent during Oct., 2001 is/was illegal and unjustified as alleged? ..*OPP.*
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Man Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of reply to the Conciliation Officer Ex. PW1/B, copy of mandays chart of petitioner Ex. PW1/C and copies of mandays chart Ex. PW1/D to Ex. PW1/N. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the Learned Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ` 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Man Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he had been engaged as a daily waged beldar from 1994 upto 1999. He also specifically denied that in between he of his own had been absenting himself. Volunteered that, he had worked from November, 1994 upto October, 2001. He categorically denied that from November, 1999 upto October, 2001, he had never worked with the respondent/department. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He further denied that he of his own left the job in October, 1999 and thereafter had never returned to work. However, he admitted that the respondent had never given fictional breaks to him. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He specifically denied that the co-workers have been re-engaged as per the orders of the Court.

12. Ex. PW1/B is the copy of reply written by the Executive Engineer, Killar Division, HPPWD Killar (Pangi) to the Labour Officer-cum-Conciliation Officer, Chamba, H.P. regarding conciliation meeting.

13. Ex. PW1/C is the copy of mandays chart relating to the petitioner.

14. Ex. PW1/D is the year-wise mandays chart relating to Smt. Chhin Dei and three others.

15. Ex. PW1/E is the copy of seniority/regularization of daily waged workers relating to Shri Dev Raj and Goutam Singh.

16. Ex. PW1/F is the copy of regularization of daily wages workers relating to Shri Tek Chand and four others.

17. Ex. PW1/G is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.

18. Exts. PW1/H to K are the copies of seniority list in respect of Shri Sucheta Ram and others.

19. Exts. PW1/L to N are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondents.

20. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

21. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He further admitted that Ex. PW1/B to Ex. PW1/L were issued by the respondent's office. He clearly admitted that persons junior who had been continuously worked, have been regularized. Volunteered that, only those persons have been regularized who were engaged as per the Court orders.

22. Ex. RW1/B is the mandays chart relating to the petitioner.

23. Ex. RW1/C is the mandays chart relating to the co-workers.

24. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1994 and had worked as such till October, 2001. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1994 and he had worked as such upto the year, 1999. The petitioner (PW1) in his cross-examination denied the fact that he had been engaged in the year 1994 by the respondent and had worked only upto the year, 1999. Although, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B, whose perusal reveals that the services of the petitioner were engaged in the month of November, 1994 for the first time as daily waged beldar and he had only worked as such upto October, 1999. But, however, the petitioner has also placed and exhibited on record his mandays chart as Ex. PW1/C. Its perusal discloses that the petitioner had been engaged for the first time as beldar in the month of November, 1994 and that he had worked as such upto October, 2001. Be it recorded here that this mandays chart has also been issued by the respondent and its genuineness was not disputed by him either at the time of evidence or during the course of arguments. This document would negate the plea of the respondent and probablize the stand taken by the petitioner that he was appointed as a daily waged beldar in the year 1994 and that he had worked as such upto October, 2001.

25. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 32 days in the year 1994, 97.5 days in the year 1995, 58 days in the year 1996, 163 days in the year 1997, 189 days in the year 1998, 114 days in the year 1999 and for 99 days in the year 2001. This document further shows that in the year 2000, the petitioner had not worked for a single day. Thus, in his total service for a period of seven years in between November, 1994 to October, 2001, he had only worked for 744.5 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2001. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to him by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that in the year 2001 the petitioner had only worked for 91 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

26. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in **[2019 (160) FLR 16]**, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

27. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Karam Dev and Shri Raj Kumar were engaged in the year 1996, those of S/Shri Hukkam Chand, Suraj Ram, Ludder Singh, Mohinder Singh, Hari Nath, Janam Singh, Smt. Jamna, Man Singh, Smt. Sarita Devi and Hari Ram were engaged in the year 1997, those of Shri Jai Dass and Mohan Lal in the year 1998, those of Shri Tek Chand and Smt. Chhin Dei were engaged in the year 1999, while those of Smt. Bhag Dei, Smt. Sur Dei, Smt. Shyami and Shri Chunku in the year 2000, those of Shri Sucheta Ram in the year 2001, while those of Smt. Ram Dei in the year 2003, those of Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Shyam Lal and Shri Gautam Singh mentioned at serial Nos. 26 & 27, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is November, 1994. There is nothing on record to show that the persons figuring at serial Nos. 1 to 22 and 24 were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

28. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

29. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

30. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that besides having landed property, he was privately engaged as a labourer. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

31. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District***

Mandi, H.P. vs. **Dilu Ram** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

32. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned by our own Hon’ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon’ble Supreme Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99(Lab.) ID/2014/Chamba, dated 2nd March, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

34. In case titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon’ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon’ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 744.5 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2001, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** *i.e.* demand notice was given on 23-6-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 38 years and had a sufficient spell of life to work and earn his livelihood.

Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

35. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No.1 is answered in the negative and against the respondent.

Issue No. 4:

36. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

37. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of January, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref: No. 45/15

Smt. Sukri Devi w/o Shri Sunder Singh, r/o Village Kharoon, P.O. Sidhpur, Tehsil
Sarkaghat, District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D, Dharampur, District Mandi, H.P.
..Respondent.

17-01-2019 Present: Sh. S.K. Sharma, Adv. for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondent.

Ld. Csl. for the petitioner has made a statement that he does not want to pursue this case. Statement recorded and placed on file. In view of the separate statement made by Ld. Csl. for the petitioner, this reference No. 45/15 is dismissed as withdrawn.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
17-01-2019

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref: No. 78/17

Shri Ramesh Kumar s/o Shri Mast Ram, r/o Village Chhapru, P.O. Bassi, Tehsil Joginder
Nagar, District Mandi, H.P. ..Petitioner.

Versus

Resident Engineer, H.P.S.E.B. Limited, Bassi Power House, Joginder Nagar, District Mandi,
H.P. ..Respondent.

18-01-2019 Present: Petitioner in person with Sh. S.S. Sippy, A.R.
vice of Sh. N.L. Kaundal, A.R.
Sh. N.D. Sharma, Adv. for the respondent

Today petitioner has made a statement that he does not want to pursue this case. Statement recorded and placed on file. In view of the separate statement made by the petitioner, this reference No. 78/17 is dismissed as withdrawn.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after due completion be consigned to the records.

Announced:
18-01-2019

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT- CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 125/2016
Date of Institution : 04-03-2016
Date of Decision : 21-01-2019

Smt. Uttam Dei w/o Shri Kewal Ram, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, Killar Division, I&PH/HPPWD Killar (Pangi), District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The appropriate government seeks adjudication by this Court on the following point of Reference:—

“Whether alleged termination of services of Smt. Uttam Dei w/o Shri Kewal Ram, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P., who has worked as beldar on daily wages basis only for 78.5 days, 84 days, 60 days, 100 days, 132.5 days, 120 days, 119 days and 64 days during the years 1996, 1997, 1999, 2000, 2001, 2002, 2003 and 2004 respectively and has raised his industrial dispute after delay of more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 78.5 days, 84 days, 60 days, 100 days, 132.5 days, 120 days, 119 days and 64 days during the years 1996, 1997, 1999, 2000, 2001, 2002, 2003 and 2004 respectively and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in

the year 1994. She continuously worked with intermittent breaks upto September, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Smt. Bhag Dei and S/Sh. Jai Dass, Prakash Chand, Smt. Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25 -F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1996 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12-6-2018:—

- (1) Whether termination of services of petitioner by the respondent during September, 2004 is/was legal and justified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Uttam Dei appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A and copy of seniority list Ex. PW1/B. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of `1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Uttam Dei (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, she denied that she had been engaged as a daily waged beldar from May, 1997 upto September, 2004. She also specifically denied that in between she of her own had been absenting herself. Volunteered that, she had worked from the year 1997 upto October, 2004. She categorically denied that after September, 2004, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in September, 2004 and thereafter had never returned to work. However, she admitted that the respondent had never given fictional breaks to her. She works as and agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

12. Ex. PW1/B is the copy of mandays chart relating to Suraj Ram & ors.

13. Conversely, Shri B.K. Kapil, Executive Engineer, H.P.P.W.D., Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

14. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

15. Ex. RW1/B is the mandays chart relating to the petitioner.

16. Ex. RW1/C is the mandays chart relating to the co-workers.

17. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1994 and had worked as such till September, 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1996 and she had worked as such upto September, 2004. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the month of May, 1997 by the respondent and had worked only upto September, 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of May, 1996 for the first time as daily waged beldar and she had only worked as such upto September, 2004. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1994 and that she had worked upto the year 2005, as claimed.

18. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 78.5 days in the year 1996, 84 days in the year 1997, 60 days in the year 1999, 100 days in the year 2000, 132.5 days in the year 2001, 120 days in the year 2002, 119 days in the year 2003 and for 64 days in the year 2004. Thus, in her total service for a period of eight years in between May, 1996 to September, 2004, she had only worked for 758 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in September, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the

petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to her by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 2004 the petitioner had only worked for 64 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

19. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in **[2019 (160) FLR 16]**, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and seventeen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Balwant Kumar were engaged in the year 1994, those of Shri Bameshwar Dutt were engaged in the year 1995, those of S/Shri Raj Kumar and Sher Singh in the year 1996, those of S/Shri Suraj Ram, Parkash Chand, Hari Ram, Chuni Lal and Smt. Sarita Devi were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku in the year 2000, those of Shri Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Parkash Chand mentioned at serial No. 5, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1996. There is nothing on record to show that S/Shri Suraj Ram, Jai Dass, Tek Chand, Chuku Ram, Parkash Chand, Budhi Ram, Smt. Bhag Dei, Smt. Ram Dei, Smt. Sarita Devi, Shri Hari Ram and Chuni Lal were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/ department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

21. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

22. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but

merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of the petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

23. While testifying in the Court as PW1, the petitioner has given her age as 50 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that she is having landed property. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

24. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

25. In ***Divisional Manager, HPFC & another vs. Garibu Ram***, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*** (1999) 6 SCC 82 that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-5/99 (Lab) ID/2016/Chamba, dated January, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

27. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all the relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 758 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on 29-5-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 50 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondent.

Issue No. 3:

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRIYOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 603/2015
Date of Institution : 19.12.2015
Date of Decision : 21.01.2019

H.P. Smt. Sunri w/o Shri Ashan Chand, r/o V.P.O. Purthi, Tehsil Pangi, District Chamba,
..Petitioner.

Versus

H.P. The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba,
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Sunri w/o Shri Ashan Chand, r/o V.P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 07-05-2012 regarding her alleged illegal termination of services during June, 2003 suffers from delay and laches? If not, Whether termination of services of Smt. Sunri w/o Shri Ashan Chand, r/o V.P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during June, 2003, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis in the year 1998. She continuously worked with intermittent breaks upto June, 2003 with the respondent.

Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'last come first go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Jai Dass, Tek Chand, Sucheta Ram, Mohan Lal, Hari Nath, Janam Singh, Jamna, Raj Kumar, Man Singh, Sarita Devi, Chhin Dei, Bhag Dei, Sur Dei, Shyami, Chunku Ram, Budhi Ram, Hari Ram, Budhi Ram, Ram Dei, Sham Lal, Dev Raj, Gautam Singh and Bameshwar. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1998 and who remained engaged till the year 2003. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangti Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 19, 21 & 23 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 20 & 22 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2003, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 09 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and

there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 23-5-2018:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 07-05-2012 qua her termination of service during June, 2003 by respondent suffers from the vice of delay and laches as alleged? ..*OPR.*
- (2) Whether termination of the services of petitioner by the respondent during June, 2003 is/was illegal and unjustified as alleged? ..*OPP.*
- (3) If issue No.1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Sunri appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of mandays chart of junior workers Ex. PW1/B to Ex. PW1/L. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: No
Issue No. 4	: Yes
Relief.	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Sunri (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had been engaged as a daily waged beldar from the year 1998 upto the year, 2003. She also specifically denied that in between she of her own had been absenting herself. Volunteered that, she had worked from the year 1998 upto the year 2003. She categorically denied that from August, 1998 upto June, 2002, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in October, 2003 and thereafter had never returned to work. She denied that she had never been removed from work by the respondent/department and that she had never been given fictional breaks. She admitted that by doing agricultural works, she was earning her livelihood. She specifically denied that the co-workers have been re-engaged as per the orders of the Court and some on compassionate grounds.

11. Conversely, Shri B.K. Kapil, Executive Engineer, H.P.P.W.D., Killar Division testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply preferred by the respondent.

In the cross-examination, he admitted that the muster rolls of the petitioner is not annexed with the reply. Volunteered that, it can be produced as per the orders of the Court. He admitted that as per the record, when the petitioner had left the work, no notice was ever served upon her. He also admitted that no departmental inquiry was initiated against the petitioner. He was also categorical that as per the record the petitioner had never been called again for work. Self stated that she had left the job of her own. He admitted that Ex. PW1/B to Ex. PW1/L have been issued by the office. He also admitted that juniors continuously remained at work and they have been regularized. Volunteered that, they were regularized as per the orders of the Court.

12. Ex. RW1/B is the mandays chart pertaining to the petitioner.

13. Ex. RW1/C is the mandays chart of the co-workers.

14. From the evidence available on record including the statement of petitioner (PW1), it can be gathered that she was appointed as daily waged beldar by the respondent/department in June, 1998. The petitioner as per her pleadings and ocular evidence led on record claimed that her services stood terminated by the respondent/department in the month of June, 2003. Reference received from the appropriate government is also to the effect that the services of the petitioner had been terminated during June, 2003. However, the mandays chart of the petitioner is there on the file as Ex. RW1/B to establish that she had worked for 47 days in the year 1998. In the subsequent years, *i.e.* from the year 1999 upto October, 2001, she had remained without any work and she was re-engaged for a period of 50 days in the year 2002 *i.e.* for 21 days in July and 29 days in the month of August. She had also worked for 57 days in the year 2003 *i.e.* for 23 days in August, for 23 days in September and for 11 days in the month of October. In view of this document, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that the relationship of employer and employee/workman came to end between the parties in June, 2003. If the petitioner had worked only upto June, 2003, how she could have been shown to have worked upto the month of October, 2003. This document falsifies the plea of the petitioner that she had worked upto June, 2003. Nowhere, in the evidence or during the course of arguments the genuineness of the mandays chart Ex. RW1/B was disputed by the

petitioner. For this reason, the reference has to be answered in the negative, as the petitioner had not prayed for the issuance of corrigendum.

15. The mandays chart of the petitioner nowhere establishes that she had worked continuously for a period of 160 days in a block of 12 calendar months anterior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case. Although, it is claimed by the petitioner that persons junior to her were retained in service by the respondent and who had been regularized, but except for the self serving and oral testimony of the petitioner there is no documentary evidence in the shape of seniority list of workers working with the respondent, which has been placed on record by the petitioner, so as to establish this fact on record. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands have been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are not attracted in this case.

16. Delay of nine years in filing the demand notice cannot be stated to be fatal so as to negate the claim of petitioner in view of various judgments rendered by the Hon'ble Supreme Court, wherein it has been held that delay in raising demand notice would not affect the right of compensation, as this Tribunal has to look into the merits of the case independently. It is well known that a duty is cast upon the workman to show that he had completed 160 days of work in a block of 12 calendar months preceding the date of his termination, as envisaged under Section 25-B of the Act. This fact, as discussed above has not been proved by the petitioner/workman. Her mandays chart Ex. RW1/B manifestly shows that she had not worked for 160 days in preceding 12 months and her services had been terminated, therefore, it can be safely said that the respondent has not flouted the provisions of Section 25-F of the Act.

17. Such being the situation, I have no hesitation to conclude that the respondent has not violated any provisions of the Act. Hence, the petitioner is not entitled to any relief.

18. Issues No. 2 and 3 are decided against the petitioner and in favour of the respondent, while issue No.1 is decided in favour of the petitioner and against the respondent.

Issue No. 4:

19. Taking into account my findings on issues No. 2 and 3 above, it is held that the claim petition is not maintainable. This issue is also decided against the petitioner and in favour of her opponent.

Relief:

20. As a sequel to my findings on the foregoing issues, the instant claim petition being meritless and not maintainable, fails. It is, therefore, dismissed. Parties to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 338/2016
Date of Institution : 26-05-2016
Date of Decision : 22-01-2019

Shri Devi Singh s/o Shri Balwant, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services Sh. Devi Singh s/o Sh. Balwant, Village Ajog, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. from 9/2004 by the Executive Engineer I&PH Division, Killar (Pangi) Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 526.5 days during the year 1996 to 2004 and has raised his industrial dispute *vide* demand notice dated nil 7-4-2012 after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1996. He continuously worked with intermittent breaks upto September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Sher Singh,

Gurdev, Smt. Man Dei, S/Shri Balwant, Dila Ram, Smt. Ram Dei, S/Shri Dev Raj, Bameshwar Dutt and Raj Kumar. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1996 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2012, *i.e.* after about 8 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 14-6-2018:—

- (1) Whether termination of the services of petitioner by the respondent during September, 2004 is/was legal and justified as alleged? ..OPP.

- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Devi Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copy of seniority list Ex. PW1/B. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ` 60,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Devi Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had been engaged as a daily waged beldar from May, 1996 upto September, 2004. He categorically denied that after September, 2004, he had never worked with the respondent/department. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He further denied that he of his own left the job in September, 2004 and thereafter had never returned to work. However, he admitted that the respondent had never given fictional breaks to him. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the copy of mandays chart relating to Sh. Suraj Ram & ors.

12. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the mandays chart relating to the co-workers.

15. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1996 and had worked as such till September, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in 1996 and he had worked as such upto the year 2004. Although, the petitioner (PW1) in his cross-examination admitted the fact that he had been engaged in the month of May, 1996 by the respondent and had worked only upto September, 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of May, 1996 for the first time as daily waged beldar and he had only worked as such upto September, 2004.

16. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 66.5 days in the year 1996, 131 days in the year 1998, 118 days in the year 2002, 116 days in the year 2003 and for 95 days in the year 2004. Thus, in his total service for a period of five years in between May, 1996 to September, 2004, he had only worked for 526.5 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in September, 2004. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to him by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that in the year, 2004 the petitioner had only worked for 95 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

17. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In **Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi

High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

18. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and seventeen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Balwant Kumar were engaged in the year 1994, those of Shri Bameshwar Dutt were engaged in the year 1995, those of S/Shri Raj Kumar and Sher Singh in the year 1996, those of S/Shri Suraj Ram, Parkash Chand, Hari Ram, Chuni Lal and Smt. Sarita Devi were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku in the year 2000, those of Shri Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Parkash Chand mentioned at serial No. 5, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1996. There is nothing on record to show that S/Shri Suraj Ram, Jai Dass, Tek Chand, Chunku Ram, Parkash Chand, Budhi Ram, Bameshwar Dutt, Raj Kumar, Smt. Bhag Dei, Smt. Ram Dei, Smt. Sarita Devi, Hari Ram, Baldev, Balwant Kumar, Sher Singh and Chuni Lal were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

19. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

20. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum- Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged, does not defeat the claim of petitioner that they were juniors to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

21. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he is having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

22. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

23. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99(Lab.) ID/2016/Chamba, dated 12th May, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

25. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually

worked for 526.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004, who had worked as non- skilled worker and had raised industrial dispute by issuance of demand notice after about *seven years i.e.* demand notice was given on 7-4-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 39 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

26. In view the discussion and findings arrived at by me above, a lump-sum compensation of `60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

27. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 569/2016
Date of Institution : 24-8-2016
Date of Decision : 22-01-2019

Smt. Ratto Devi w/o Shri Dhian Chand, r/o Village Dharwas, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Ratto Devi w/o Sh. Dhian Chand, Village Dharwas, P.O. Dharwas, Tehsil Pangi, Distt. Chamba, H.P. during September, 2003 by the Executive Engineer, H.P.P.W.D. Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 845 days during the years 1996 to 2003 and has raised her industrial dispute *vide* demand notice dated Nil (received in the office of Labour Officer Chamba on 9-6-2015) after more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the years mentioned as above and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1996. She continuously worked with intermittent breaks upto September, 2003 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The

names of the juniors, who were retained in service by the respondent are S/Smt./Shri Gurdev, Man Dei, Sher Singh, Balwant, Dila Ram, Tek Chand, Bhag Dei, Ram Dei, Dev Raj and Bameshwar Dutt. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1996 and who remained engaged till the year 1998. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangri Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 1998, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2015, *i.e.* after about 17 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12-6-2018:—

- (1) Whether termination of services of petitioner by the respondent during September, 2003 is/was legal and justified? ..*OPP.*

- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Ratto Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A and copy of seniority list Ex. PW1/B. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ` 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Ratto Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had been engaged as a daily wage beldar from May, 1996 upto November, 1998. She also specifically denied that in between she of her own had been absenting herself. Volunteered that, she had worked from the year 1995 upto October, 2004. She categorically denied that after November, 1998, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in November, 1998 and thereafter had never returned to work. However, she admitted that the respondent had never given fictional breaks to her. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the copy of seniority list relating to Shri Suraj Ram and others.

12. Conversely, Shri B.K. Kapil, Executive Engineer, H.P.P.W.D., Division Killar (respondent) testified as RW1. in his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the mandays chart relating to the co-workers.

15. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1996 and had worked as such till September, 2003. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year, 1996 and she had worked as such upto the year, 1998. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the month of May, 1996 by the respondent and had worked only upto November, 1998, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of May, 1996 for the first time as daily waged beldar and she had only worked as such upto November, 1998. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1996 and that she had worked upto September, 2003, as claimed.

16. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 27 days in the year 1996, 121 days in the year 1997 and for 175 days in the year 1998. Thus, in her total service for a period of three years in between May, 1996 to November, 1998, she had only worked for 323 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in September, 2003. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to her by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 1998 the petitioner had worked for 175 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

17. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd.*

vs. Sh. Prem Chand reported in [2019 (160) FLR 16] it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

18. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and seventeen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Balwant Kumar were engaged in the year 1994, those of Shri Bameshwar Dutt were engaged in the year 1995, those of S/Shri Raj Kumar and Sher Singh in the year 1996, those of S/Shri Suraj Ram, Parkash Chand, Hari Ram, Chuni Lal and Smt. Sarita Devi were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku in the year 2000, those of Shri Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Parkash Chand mentioned at serial No. 5, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1996. There is nothing on record to show that S/Shri Suraj Ram, Jai Dass, Tek Chand, Chunku Ram, Parkash Chand, Budhi Ram, Raj Kumar, Smt. Bhag Dei, Smt. Ram Dei, Smt. Sarita Devi, Hari Ram, Sher Singh and Chuni Lal were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

19. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

20. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court - cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged, does not defeat the claim of petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

21. While testifying in the Court as PW1, the petitioner has given her age as 52 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that she is having landed property. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

22. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op.-Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

23. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* her report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99 (Lab.) ID/2016/Chamba, dated 18th July, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

25. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually

worked for 323 days as per mandays chart on record and that the services of petitioner were disengaged in November, 1998, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about *twelve years* i.e. demand notice was given on 9-6-2015. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 52 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

27. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 243/2016
Date of Institution : 21-4-2016
Date of Decision : 22-01-2019

Smt. Begmu w/o Shri Bishamber Nath, r/o Village and Post Office Purthi, Tehsil Pangi, Distt. Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Begmu w/o Shri Bishamber Nath, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. during October, 2005 by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised her industrial dispute after more than 6 years *vide* demand notice dated 07-05-2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis in the year, 1994. She continuously worked with intermittent breaks uptil October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Jai Dass, Tek Chand, Sucheta Ram, Mohan Lal, Hari Nath, Janam Singh, Smt. Jamna, S/Shri Raj Kumar, Man Singh, Smt. Sarita Devi, Smt. Chhin Dei, Smt. Bhag Dei, Smt. Sur Dei, Smt. Shyami, S/Shri Chunku Ram, Budhi Ram,

Smt. Ram Dei, S/Shri Sham Lal, Dev Raj, Gautam Singh and Bameshwar. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 19, 21 & 23 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 20 & 22 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 1994, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 18 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 23-5-2018:

- (1) Whether termination of the services of petitioner by the respondent during the year October, 2005 is/was improper and unjustified as alleged? ..OPP.

- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..*OPR*.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Begmu appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A and copies of mandays chart Ex. PW1/B to Ex. PW1/L. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ` 10,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Begmu (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had only worked for 22 days in the month of August, 1994 with the respondent/department. Volunteered that, she had worked from the year, 1994 upto October, 2005. She categorically denied that from September, 1994, upto October, 2005, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in August, 1994 and thereafter had never returned to work. However, she admitted that the respondent had never given fictional breaks to her. She works as an agriculturist and these days is earning her livelihood from

agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the year-wise mandays chart relating to Smt. Chhin Dei and three others.

12. Ex. PW1/C is the copy of seniority/regularization of daily waged workers relating to Shri Dev Raj and Goutam Singh.

13. Ex. PW1/D is the copy of regularization of daily wages workers relating to Shri Tek Chand and four others.

14. Ex. PW1/E is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.

15. Exts. PW1/F to I are the copies of seniority list in respect of Shri Sucheta Ram and others.

16. Exts. PW1/J to L are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondents.

17. Conversely, Shri B.K. Kapil, Executive Engineer, H.P.P.W.D., Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He further admitted that Ex. PW1/B to Ex. PW1/L were issued by the respondent's office. He clearly admitted that junior persons, who had continuously worked, have been regularized. Volunteered that, only those persons have been regularized who were engaged as per the Court orders.

18. Ex. RW1/B is the mandays chart relating to the petitioner.

19. Ex. RW1/C is the mandays chart relating to the co-workers.

20. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1994 and had worked as such till October, 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the month of August, 1994. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the month of August, 1994 and had worked only for 22 days with the respondent/department but, however, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B, whose perusal reveals that the services of the petitioner were engaged in the month August, 1994 for the first time as daily waged beldar and she had only worked for 22 days. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1994 and that she had worked upto October, 2005.

21. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 22 days in the year 1994. This document further shows that from the years 1995 to 2005, the petitioner had not worked for a single day. Thus, in her total service in the month of August, 1994, she had worked only for 22 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to her by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 1994 the petitioner had only worked for 22 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

22. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

23. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Karam Dev and Shri Raj Kumar were engaged in the year 1996, those of S/Shri Hukkam Chand, Suraj Ram, Ludder Singh, Mohinder Singh, Hari Nath, Janam Singh, Smt. Jamna, Man Singh, Smt. Sarita Devi and Hari Ram were engaged in the year 1997, those of Shri Jai Dass and Mohan Lal in the year 1998, those of Shri Tek Chand and Smt. Chhin Dei were engaged in the year 1999, while those of Smt. Bhag Dei, Smt. Sur Dei, Smt. Shyami and Shri Chunku in the year 2000, those of Shri Sucheta Ram in the year 2001, while those of Smt. Ram Dei in the year 2003, those of Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Shyam Lal and Shri Gautam Singh mentioned at serial Nos. 26 & 27, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is August, 1994. There is nothing on record to show that the persons figuring at serial Nos. 1 to 22 and 24 were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at

the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

25. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum- Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

26. While testifying in the Court as PW1, the petitioner has given her age as 49 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that she is having landed property. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

27. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)..."

28. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

29. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* her report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99 (Lab.) ID/2016/Chamba, dated 11th April, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

30. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for a month and actually worked for 22 days as per mandays chart on record and that the services of petitioner were disengaged in August, 1994, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about ***eighteen years*** *i.e.* demand notice was given on 7-5-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 49 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

31. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

32. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

33. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 306/2016
Date of Institution : 12-5-2016
Date of Decision : 23-01-2019

Shri Prem Singh s/o Shri Gami Ram, r/o Village Ghissal, P.O. Sach, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Prem Singh s/o Shri Gami Ram, r/o Vill. Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during

09/2004 by the Executive Engineer, H.P.P.W.D./I&PH Division Killar (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 36, 47 and 17 days during years 1997, 1999 and 2004 respectively and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1995. He continuously worked with intermittent breaks upto the year, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram, Chunku, Budhi Ram and Dev Raj. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

"the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and he be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to."

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1997 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of

persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2013, *i.e.* after about 9 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 14-11-2017:

- (1) Whether termination of services of the petitioner by the respondent during September, 2004 is/was improper and unjustified as alleged ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Prem Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of demand notice, Ex. PW1/B & copy of seniority list Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No

Relief

: Petition is partly allowed awarding lump sum compensation of ` 15,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Prem Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had been engaged as a daily waged beldar from May, 1997 upto September, 2004. He also specifically denied that in between he of his own had been absenting himself. Volunteered that, he had worked from the year 1995 upto October, 2004. He categorically denied that after September, 2004, he had never worked with the respondent/department. He also denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He further denied that he of his own left the job in September, 2004 and thereafter had never returned to work. However, he admitted that the respondent had never given fictional breaks to him. He works as an agriculturist and these days is earning his livelihood from agricultural chores. He specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

12. Ex. PW1/C is the copy of mandays chart relating to Sh. Suraj Ram & ors.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1995 and had worked as such till the year, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 1997 and he had worked as such upto the year, 2004. Although, the petitioner (PW1) in his cross-examination denied the fact that he had been engaged in the month of May,

1997 by the respondent and had worked only upto September, 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of May, 1997 for the first time as daily waged beldar and he had only worked as such upto September, 2004. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1995 and that he had worked upto the year, 2004, as claimed.

17. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 36 days in the year 1997, 29 days in the year 1999 and for 17 days in the year 2004. Thus, in his total service for a period of three years in between May, 1997 to September, 2004, he had only worked for 82 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in the year, 2004. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to him by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from date of his termination. It is evident from the mandays chart that in the year 2004 the petitioner had only worked for 17 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

18. A plea was taken by the respondent that the petitioner was an intermittent worker. He left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and three others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Suraj Ram were engaged in the year 1997, while those of Shri Chunku in the year 2000 and that of Shri Budhi Ram in the year 2001. Of course, a note has been given on Ex. RW1/C that all these four workers were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1997. There is nothing on record to show that S/Shri Chunku and Budhi Ram were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the

time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

20. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

21. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-*cum*-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-*cum*-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged, does not defeat the claim of petitioner that they were juniors to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

22. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he was having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

23. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)...”

24. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

25. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99(Lab.) ID/2016/Chamba, dated 4th May, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

26. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 82 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** *i.e.* demand notice was given on 26-3-2013. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 42 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹ 15,000/- (Rupees fifteen thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondent.

Issue No. 3:

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2019

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 21/2016
Date of Institution	: 20-1-2016
Date of Decision	: 23-01-2019

Smt. Shanti w/o Sh. Shri Ram, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P.	<i>..Petitioner.</i>
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Versus

The Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P.	<i>..Respondent.</i>
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Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. O.P. Bhardwaj, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of services of Smt. Shanti w/o Sh. Shri Ram, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer,

Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. during October, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1994. She continuously worked with intermittent breaks upto October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Smt./Shri Gurdev, Man Dei, Sher Singh, Balwant, Dila Ram, Tek Chand, Bhag Dei, Ram Dei, Dev Raj and Bameshwar Dutt. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by

the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 19-12-2016:

- (1) Whether termination of services of the petitioner by the respondent during October, 2004 is/was illegal and unjustified as alleged? *..OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *..OPR.*
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? *..OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Shanti appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A and copy of seniority list Ex. PW1/B. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No

Relief

: Petition is partly allowed awarding lump sum compensation of ` 1,25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Shanti (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had been engaged as a daily waged beldar from May, 1994 upto October, 2004. She also specifically denied that in between she of her own had been absenting herself. Volunteered that, she had worked from the year 1994 upto October, 2004. She categorically denied that after October, 2004, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in October, 2004 and thereafter had never returned to work. However, she admitted that the respondent had never given fictional breaks to him. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the copy of seniority list relating to Shri Suraj Ram and others.

12. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were reengaged, the petitioner had not been called for work.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the mandays chart relating to the co-workers.

15. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1994 and had worked as such till October, 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year, 1994 and she had worked as such upto the year, 2004. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the month of May, 1994 by the respondent and had worked only upto October, 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of

May, 1994 for the first time as daily waged beldar and she had only worked as such upto October, 2004. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1994 and that she had worked upto October, 2005, as claimed.

16. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 169 days in the year 1994, 114 days in the year 1995, 167 days in the year 1996, 158 days in the year 1997, 82 days in the year 1998, 112 days in the year 1999, 116 days in the year 2000, 80 days in the year 2001, 122 days in the year 2002, 94 days in the year 2003 and for 106 days in the year 2004. Thus, in her total service for a period of eleven years in between May, 1994 to October, 2004, she had only worked for 1320 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to her by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 2004 the petitioner had worked for 106 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

17. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

18. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and seventeen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Balwant Kumar were engaged in the year 1994, those of Shri Bameshwar Dutt were engaged in the year 1995, those of S/Shri Raj Kumar and Sher Singh in the year 1996, those of S/Shri Suraj Ram, Parkash Chand, Hari Ram, Chuni Lal and Smt. Sarita Devi were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku in the year 2000, those of Shri Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Parkash Chand mentioned at serial No. 5, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1994. There is nothing on record to

show that S/Shri Suraj Ram, Jai Dass, Tek Chand, Chunku Ram, Parkash Chand, Budhi Ram, Bameshwar Dutt, Raj Kumar, Smt. Bhag Dei, Smt. Ram Dei, Smt. Sarita Devi, S/Shri Hari Ram and Chuni Lal were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/ department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

19. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

20. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-*cum*-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-*cum*-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

21. While testifying in the Court as PW1, the petitioner has given her age as 40 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that she is having landed property. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

22. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)...”

23. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial

dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* her report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99(Lab)ID /2014/Chamba, dated 11th January, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

25. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 1320 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2004, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 2-2-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 40 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in Geetam Singh's case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

27. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned

District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 563/2015
Date of Institution	: 04-12-2015
Date of Decision	: 24-01-2019

Smt. Nur Dei w/o Shri Sher Singh, r/o V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P.	..Petitioner.
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Versus

The Executive Engineer, H.P.P.W.D./I.P.H., Killar (Pangi), District Chamba, H.P.	..Respondent.
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Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. O.P. Bhardwaj, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Nur Dei w/o Shri Sher Singh, r/o V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 19-12-2011 regarding her alleged illegal termination of services during November, 1997 suffers from delay and laches? If not, Whether termination of services of worker Smt. Nur Dei w/o Shri Sher Singh, r/o V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during November, 1997, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1988. She continuously worked with intermittent breaks upto October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Smt./Shri Chuni Lal, Tek Chand, Bhag Dei, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been

taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1990 and who remained engaged till the year 1997. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1997, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2011, *i.e.* after about 14 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 20-4-2016:

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 19-12-2011 *qua* her termination of service during November, 1997 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
- (2) Whether termination of the services of petitioner by the respondent during November, 1997 is/was illegal and unjustified as alleged? ..OPP.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Nur Dei appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of seniority list Ex. PW1/B and copy of demand notice Ex. PW1/C. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ` 1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Nur Dei (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had been engaged as a daily waged beldar from May, 1990 upto November, 1997. She also specifically denied that in between she of her own had been absenting herself. Volunteered that, she had worked from the year 1988 upto November, 1997. She categorically denied that after November, 1997, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in November, 1997 and thereafter had never returned to work. However, she admitted that the respondent had never given fictional breaks to her. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the copy of seniority list relating to Shri Suraj Ram and others.

12. Ex. PW1/C is the copy of demand notice served upon the respondent by the petitioner.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

14. Ex. RW1/B is the mandays chart relating to the petitioner.
15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1988 and had worked as such till October, 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year, 1988 and she had worked as such upto the year, 2005. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the month of September, 1990 by the respondent and had worked only upto November, 1997, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of September, 1990 for the first time as daily waged beldar and she had only worked as such upto November, 1997. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1988 and that she had worked upto October, 2005, as claimed.

17. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 30 days in the year 1990, 146 days in the year 1991, 86 days in the year 1992, 02 days in the year 1993, 159 days in the year 1994, 179.5 days in the year 1995, 27 days in the year 1996 and for 129 days in the year 1997. Thus, in her total service for a period of eight years in between September, 1990 to November, 1997, she had only worked for 758.5 days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to her by the respondent. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 1997 the petitioner had worked for 129 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

18. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and seventeen others, reveals that Shri Dev Raj was appointed in the year

1989, whereas the services of Shri Balwant Kumar were engaged in the year 1994, those of Shri Bameshwar Dutt were engaged in the year 1995, those of S/Shri Raj Kumar and Sher Singh in the year 1996, those of S/Shri Suraj Ram, Parkash Chand, Hari Ram, Chuni Lal and Smt. Sarita Devi were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku in the year 2000, those of Shri Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Parkash Chand mentioned at serial No. 5, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is September, 1990. There is nothing on record to show that S/Shri Suraj Ram, Jai Dass, Tek Chand, Chunku Ram, Parkash Chand, Budhi Ram, Bameshwar Dutt, Raj Kumar, Smt. Bhag Dei, Smt. Ram Dei, Smt. Sarita Devi, S/Shri Hari Ram, Baldev, Sher Singh and Cuni Lal were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

20. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

21. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-*cum*-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-*cum*-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged, does not defeat the claim of petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

22. While testifying in the Court as PW1, the petitioner has given her age as 53 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that she is having landed property. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

23. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere

hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

24. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon’ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon’ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (199 9) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

25. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5-99 (Lab.) ID/2013/Chamba, dated 24th November, 2015. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

26. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon’ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon’ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 758.5 days as per mandays chart on record and that the services of petitioner were disengaged in November, 1997, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about ***fourteen years*** *i.e.* demand notice was given on 19-12-2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 53 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon’ble Supreme Court in *Geetam Singh’s* case (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No. 1 is answered in the negative and against the respondent.

Issue No. 4:

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ` 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRIYOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 629/2016
Date of Institution	: 01-9-2016
Date of Decision	: 24-01-2019

Smt. Bimla Devi d/o Shri Ram Kishan, r/o Village and Post Office Kumar, Tehsil
Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

Whether alleged termination of services of Smt. Bimla Devi d/o Shri Ram Kishan, r/o Village and Post Office Kumar, Tehsil Pangi, District Chamba, H.P. during November, 1997 by the Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised her industrial dispute after more than 14 years *vide* demand notice dated 31-08-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1994. She continuously worked with intermittent breaks upto November, 1997 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri/Smt. Bhag Dei, Jai Dass, Prakash Chand, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be

granted all consequential benefits as also the other allowances, besides being other benefits and regularizations after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who remained engaged till the year 1997. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangri Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 1997, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, i.e. after about 15 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12-6-2018:—

- (1) Whether termination of service of petitioner by the respondent during November, 1997 is/was legal and justified? ..*OPP*.
 - (2) If issue No.1 is proved in affirmative, to what service benefits petitioner is entitled to? ..*OPP*.
 - (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
 - (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.
- Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Smt. Bimla Devi appeared as PW1 and tendered

in evidence her statement by way of affidavit Ex. PW1/A and copy of seniority list Ex. PW1/B. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ` 50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Bimla Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that she had been engaged as a daily waged beldar from June, 1994 upto November, 1997. She categorically denied that after November, 1997, she had never worked with the respondent/department. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in November, 1997 and thereafter had never returned to work. However, she admitted that the respondent had never given fictional breaks to her. She works as an agriculturist and these days is earning her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the copy of seniority list relating to Shri Tek Chand and others.

12. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were reengaged, the petitioner had not been called for work.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the mandays chart relating to the co-workers.

15. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1994 and had worked as such till November, 1997. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year, 1994 and she had worked as such upto the year, 1997. The petitioner (PW1) in her cross-examination admitted the fact that she had been engaged in the month of June, 1994 by the respondent and had worked as such upto November, 1997. The respondent has also proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of June, 1994 for the first time as daily waged beldar and she had only worked as such upto November, 1997.

16. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 97 days in the year 1994, 68 days in the year 1995, 141 days in the year 1996 and 176 days in the year 1997. Thus, in her total service for a period of four years in between June, 1994 to November, 1997, she had only worked for 482 days. Be it recorded here that the petitioner had worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in November, 1997. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner while under cross-examination clearly admitted that no intentional fictional breaks had been given to her by the respondent. It is established on record that the petitioner had worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 1997 the petitioner had worked for 176 days, therefore, immediately in the preceding 12 calendar months from the month of termination, the petitioner had worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was required of the respondent to have issued notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

17. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

18. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and seventeen others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Balwant Kumar were engaged in the year 1994, those of Shri Bameshwar Dutt were engaged in the year 1995, those of S/Shri Raj Kumar and Sher

Singh in the year 1996, those of S/Shri Suraj Ram, Parkash Chand, Hari Ram, Chuni Lal and Smt. Sarita Devi were engaged in the year 1997, those of Shri Jai Dass in the year 1998, those of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku in the year 2000, those of Shri Budhi Ram in the year 2001 and that of Smt. Ram Dei in the year 2003. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Parkash Chand mentioned at serial No. 5, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is June, 1994. There is nothing on record to show that S/Shri Suraj Ram, Jai Dass, Tek Chand, Chunku Ram, Parkash Chand, Budhi Ram, Bameshwar Dutt, Raj Kumar, Smt. Bhag Dei, Smt. Ram Dei, Smt. Sarita Devi, S/Shri Hari Ram, Baldev, Sher Singh and Cuni Lal were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

19. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

20. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-*cum*-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-*cum*-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged, does not defeat the claim of petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-F, 25-G and 25-H of the Act, which as discussed above have been violated.

21. While testifying in the Court as PW1, the petitioner has given her age as 38 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. It is also evident from her cross-examination that she is having landed property. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

22. The learned District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the

Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)...”

23. In *Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160*, delay of more than 10 years was condoned by our own Hon’ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon’ble Supreme Court in *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82* that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

24. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-5/99 (Lab) ID/2016/Chamba, dated 19th August, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

25. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in *2013 (136) FLR 893 (SC)*, it was held by the Hon’ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas her services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon’ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 482 days as per mandays chart on record and that the services of petitioner were disengaged in November, 1997, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about *fourteen years i.e.* demand notice was given on 31-8-2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 38 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon’ble Supreme Court in *Geetam Singh’s case (supra)*, the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ` 50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the

date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

27. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of `50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of January, 2019.

Sd/-
(YOGESHJASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**In the Court of Shri Neeraj Gupta, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Sh. Chander Prakash s/o Shri Punnu Ram, r/o Village Charain, Baldeyan, Tehsil and District Shimla, Himachal Pradesh.

Versus

General Public

. . . Respondent.

Whereas Sh. Chander Prakash s/o Shri Punnu Ram, r/o Village Charain, Baldeyan, Tehsil and District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter the name/date

of birth of his son named—Ayaan s/o Sh. Chander Prakash s/o Shri Punnu Ram, r/o Village Charain, Baldeyan, Tehsil and District Shimla, Himachal Pradesh in the record of Secy., Birth and Death, Municipal Corporation, Tehsil and District Shimla.

Sl. No.	Name of the family member	Relation	Date of Birth
1.	Ayaan	Son	03-06-2016

Hence, this proclamation is issued to the general public if they have any objection/claim regarding to enter the name/date of birth of above named in the record of Municipal Corporation, Tehsil and District Shimla may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 19-09-2019 under my signature and seal of the court.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Shimla (R), District Shimla, H.P.*

CHANGE OF NAME

I, Lal Singh s/o Sh. Nain Singh, r/o Village Badal, P.O. Koti Uttrow, Tehsil Shillai, District Sirmaur (H.P.) do hereby solemnly affirm and declare on affidavit dated 31st August, 2019 that the name of my wife was wrongly entered in Gram Panchayat Koti Uttrow as Chhuma Devi instead of Suman. Now I want to correct the name of my wife in Gram Panchayat record as Suman. So, in future my wife may be known as Suman for all purposes and necessary records.

LAL SINGH

*s/o Sh. Nain Singh, r/o Village Badal, P.O. Koti Uttrow,
Tehsil Shillai, District Sirmaur (H.P.),*

CHANGE OF NAME

I, Lal Singh s/o Sh. Nain Singh, r/o Village Badal, P.O. Koti Uttrow, Tehsil Shillai, District Sirmaur (H.P.) do hereby solemnly affirm and declare on affidavit dated 31st August, 2019 that the name of my son was wrongly entered in Gram Panchayat Koti Uttrow as Sumeer Chand instead of Sameer Thakur. Now I want to correct the name of my son in Gram Panchayat record as Sameer Thakur. So, in future my son may be known as Sameer Thakur for all purposes and necessary records.

LAL SINGH

*s/o Sh. Nain Singh, r/o Village Badal, P.O. Koti Uttrow,
Tehsil Shillai, District Sirmaur (H.P.),*